

H.B. 1731	Howard, Blake
H.B. 1954	Howard, Blake
H.B. 2102	Doggett, Blake
H.B. 2196	Howard, Blake

CONCLUSION OF SESSION FOR LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer (Senator Blake in Chair) announced that the session for the consideration of the Local and Uncontested Bills Calendar was concluded.

ADJOURNMENT

On motion of Senator Mauzy, the Senate at 10:58 o'clock a.m. adjourned until 11:00 o'clock a.m. today.

SEVENTY-SECOND DAY (Monday, May 23, 1983)

The Senate met at 11:00 o'clock a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

Absent-excused: Glasgow.

A quorum was announced present.

The Reverend Jeffrey H. Walker, Palmer Memorial Episcopal Church, Houston, offered the invocation as follows:

Oh, God, the fountain of wisdom whose will is good and gracious and whose law is truth, we beseech You so to guide the legislature of this State that they may enact such laws as shall please You. Direct in our time, we pray, those who speak where many listen that they may do their part in making the heart of this people wise, its mind sound, and its will righteous. Deliver those who share in the government of our State from the service of self alone. Make them responsive to the needs of our people that they may do the work You have given them to do for the common good. We remember before You this day those who suffer want and anxiety from lack of work. Guide the people of this State so to use our private and public wealth, that all may find suitable and fulfilling employment and receive just payment for their labor. Give us all a reverence for the earth as Your creation, that we may use its resources rightly in the service of others and to Your honor and glory.

Finally, we beseech You to comfort and heal all those who suffer as victims of the recent storms which have damaged our State and the lives of our people. Give those who suffer courage and hope in their troubles, that they may be relieved, sheltered, and protected, for Yours is the Kingdom; Yours is the Power, Yours is the Glory, now and forever, Amen.

On motion of Senator Mauzy and by unanimous consent, the reading of the Journal of the proceedings of Thursday, May 19, 1983, was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

Senator Glasgow was granted leave of absence for today on account of inclement weather on motion of Senator Mauzy.

REPORTS OF STANDING COMMITTEES

Senator Traeger submitted the following report for the Committee on Intergovernmental Relations:

H.B. 230
H.B. 186
H.B. 804

Senator Jones submitted the following report for the Committee on Finance:

H.B. 2158
H.B. 1603
H.B. 2285
H.B. 2282
H.B. 2134
H.B. 2031
H.B. 1447
H.B. 1655
C.S.H.B. 1580 (Read first time)
H.B. 2284

Senator Whitmire, Acting Chairman, submitted the following report for the Committee on Health and Human Resources:

C.S.S.B. 1414 (Read first time)

Senator Mauzy submitted the following report for the Committee on Jurisprudence:

H.B. 283 (Amended)
H.B. 805
H.B. 838
H.B. 882
H.B. 1061
H.B. 1208
H.B. 1291
H.B. 1686
H.B. 2046
H.B. 2398
H.B. 1986
H.B. 2217
H.B. 2218
H.B. 2333
H.B. 2334
H.B. 1108
H.B. 1178
H.B. 2224
H.B. 2352
H.B. 30
H.B. 1169
H.B. 33
H.B. 1118

S.B. 724
H.B. 413
H.B. 1819
H.B. 1933
C.S.H.B. 44 (Read first time)
(Again reported)
H.B. 2107
H.B. 895
H.B. 42

Senator Harris submitted the following report for the Committee on Economic Development:

H.B. 149
H.B. 1792
H.B. 1054
H.B. 1554
S.B. 924
H.B. 1987
H.B. 1710
H.B. 1608
H.B. 1007
H.B. 1488
H.B. 1658
H.B. 2118
H.B. 2220
C.S.H.B. 1575 (Read first time)
H.B. 1372
H.B. 179

Senator Parker submitted the following report for the Committee on Education:

H.B. 178
H.B. 590
H.B. 784
H.C.R. 242
H.B. 848
H.B. 2160 (Amended)
H.B. 2076
H.B. 1704

HOUSE BILLS ORDERED NOT PRINTED

On motion of Senator Traeger and by unanimous consent, the following bills were ordered not printed:

H.B. 230
H.B. 186
H.B. 804

HOUSE BILLS ORDERED NOT PRINTED

On motion of Senator Jones and by unanimous consent, the following bills were ordered not printed:

H.B. 1603
H.B. 2285
H.B. 2282

H.B. 2134
H.B. 2031
H.B. 1447
H.B. 1655
H.B. 2284

BILLS ORDERED NOT PRINTED

On motion of Senator Mauzy and by unanimous consent, the following bills were ordered not printed:

H.B. 805
H.B. 838
H.B. 882
H.B. 1061
H.B. 1208
H.B. 1291
H.B. 1686
H.B. 2046
H.B. 2398
H.B. 1986
H.B. 2217
H.B. 2218
H.B. 2333
H.B. 2334
H.B. 1108
H.B. 1178
H.B. 2224
H.B. 2352
H.B. 30
H.B. 1169
H.B. 33
H.B. 1118
S.B. 724
H.B. 413
H.B. 1819
H.B. 1933
H.B. 2107
H.B. 895
H.B. 42

BILLS ORDERED NOT PRINTED

On motion of Senator Harris and by unanimous consent, the following bills were ordered not printed:

H.B. 1554
S.B. 924
H.B. 1987
H.B. 1710
H.B. 1608
H.B. 1007
H.B. 1488
H.B. 2118
H.B. 2220
H.B. 1372
H.B. 179

HOUSE BILLS AND RESOLUTION ORDERED NOT PRINTED

On motion of Senator Parker and by unanimous consent, the following bills were ordered not printed:

H.B. 590
H.C.R. 242
H.B. 848
H.B. 2076
H.B. 1704

SENATE BILLS AND RESOLUTIONS ON FIRST READING

On motion of Senator Santiesteban and by unanimous consent, the following bills and resolutions were introduced, read first time and referred to the Committee indicated:

S.R. 649 by Glasgow Jurisprudence
Creating an interim committee to study codification of the Texas rules of criminal evidence.

S.C.R. 127 by Santiesteban Administration
Granting R. A. Knapp, Karol Knapp, R. E. Knapp and Barbara Knapp permission to sue the State.

S.C.R. 128 by Brooks Administration
Granting Gulf Coast Regional Mental Health-Mental Retardation Center permission to sue the State.

S.B. 1431 by Brown Economic Development
Relating to the enforcement of restrictive covenants by certain homeowners' associations and to the inception of liens securing assessments imposed by restrictive covenants.

S.B. 1432 by Glasgow Intergovernmental Relations
Relating to fees for support collections and payments to be charged by the clerk of the district courts of Johnson County.

S.B. 1433 by Edwards Intergovernmental Relations
Relating to the authority of a county to adopt zoning and building construction ordinances for the areas around certain lakes; providing a penalty.

S.B. 1434 by Traeger State Affairs
Relating to the sale of beer by general, local or branch distributors who have an assigned sales territory from manufacturers or nonresident manufacturers; amending Section 102.51, Alcoholic Beverage Code; and declaring an emergency.

ESCORT COMMITTEE APPOINTED

In accordance with the provisions of **H.C.R. 151**, the President announced the appointment of the following as a Committee to Escort The Honorable John Tower to the Joint Session: Senators Harris, Leedom, McFarland, Brown and Farabee.

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was referred to the Committee on State Affairs, Subcommittee on Nominations:

Austin, Texas

May 19, 1983

TO THE SENATE OF THE SIXTY-EIGHTH LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

TO BE DISTRICT ATTORNEY FOR THE 52ND JUDICIAL DISTRICT, CORYELL COUNTY, UNTIL THE NEXT GENERAL ELECTION AND UNTIL HIS SUCCESSOR SHALL BE DULY ELECTED AND QUALIFIED:

PHILLIP HARVEY ZEIGLER

309 South 10th Street

Gatesville, Texas 76528

(Mr. Zeigler is replacing the Honorable Bobby L. Cummings of Gatesville, Coryell County, Texas, who resigned.)

TO BE A MEMBER OF THE TEXAS FINANCE COMMISSION:

For a term to expire February 1, 1989:

RALPH DONALD REED

2707 Celinda Circle

College Station, Texas 77840

(Mr. Reed is replacing Mr. Michael E. Lallinger of Houston, Harris County, Texas, whose term expired.)

Respectfully submitted,

/s/Mark White

Governor of Texas

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was filed with the Secretary of the Senate:

Austin, Texas

May 21, 1983

TO THE SENATE OF THE SIXTY-EIGHTH LEGISLATURE, REGULAR SESSION:

Pursuant to Article IV, Section 14 of the Constitution of Texas, I hereby veto Senate Bill 1221 because of the following constitutional and policy objections:

The safeguards provided by the current system of checks and balances far outweigh the short acceleration in payments provided by this bill.

Therefore, I veto **S.B. 1221**.

Pursuant to Article IV, Section 14 of the Constitution of Texas, I hereby veto Senate Bill 319 because of the following constitutional and policy objections:

Strong laws regulating nepotism in state government have served this state well, and a weakening of these prohibitions should not be permitted.

Therefore, I veto **S.B. 319**.

Respectfully submitted,

/s/Mark White

Governor of Texas

SENATE BILL 1 WITH HOUSE AMENDMENTS

Senator Sarpalius called S.B. 1 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - T. Smith

Substitute the following for S.B. 1:

**A BILL TO BE ENTITLED
AN ACT**

relating to driving while intoxicated, involuntary manslaughter involving the use of a motor vehicle, and allowing a dangerous driver to borrow a motor vehicle; providing for visual recording of a person arrested, for tests and trial procedures for dealing with an offender, and for the criminal and civil consequences of a conviction of those offenses, including insurance consequences and forfeiture of motor vehicles; and changing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), is amended by adding Section 4A to read as follows:

"Section 4A. (a) The Department may not issue a license or permit to a person convicted of an offense under Article 67011-1, Revised Statutes, or Subdivision (2), Subsection (a), Section 19.05, Penal Code, unless the period of suspension that would have applied had the person had a license, permit, or privilege at the time of the conviction has expired. The Department may not issue a license or permit to a person if the Department has been ordered by a juvenile court under Section 54.042, Family Code, to deny the person a license or permit, unless the period of time specified in the order has expired.

"(b) A person does not have a privilege to operate a motor vehicle in this state during the period described in Subsection (a) of this section if the Department is prohibited from issuing a license or permit to that person under this section."

SECTION 2. Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (b), and (d) and adding Subsections (e), (f), (g), and (h) to read as follows:

"(a) Except as provided by Subsection (g) of this Section, the [The] license of any person shall be automatically suspended upon final conviction of any of the following offenses:

"1. An offense under Section 19.07, Penal Code, committed as a result of the person's criminally negligent operation of a motor vehicle, or an offense under Section 19.05(a)(2), Penal Code [~~Negligent homicide resulting from the operation of a motor vehicle~~];

"2. An offense under Article 67011-1, Revised Statutes [~~Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs~~];

"3. Any offense punishable as a felony under the motor vehicle laws of this State;

"4. A conviction of a driver of a motor vehicle involved in an accident or collision, upon a charge of failure to stop, render aid, and disclose his identity at the scene of said accident or collision[;

"[5. A conviction upon a charge of aggravated assault upon the person by means of motor vehicle, as provided by law].

"(b) Except as provided by Subsections (d), (e), (g), and (h) of this Section, the [The] suspension above provided shall in the first instance be for a period of twelve (12) months. In event any license shall be suspended under the provision

of this Section for a subsequent time, said subsequent suspension shall be for a period of eighteen (18) months, except as provided by Subsections (d), (e), (g), and (h) of this Section."

"(d) Except as provided by Subsections (g) and (h) of this Section, if a person is convicted of an offense under Article 67011-1, Revised Statutes, as amended, the suspension of the person's license shall be for a period determined by the court according to the following schedule:

"(1) not less than ninety (90) or more than three hundred sixty-five (365) days, if the person is punished under Subsection (c) of that article, whether or not the punishment is increased under Subsection (f) of that article; or

"(2) not less than one hundred eighty (180) days or more than two (2) years, if the person is punished under Subsection (d) or (e) of that article, whether or not the punishment is increased under Subsection (f) of that article.

"(e) If a person is convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, the suspension of the person's license shall be for a period determined by the court of not less than one hundred eighty (180) days or more than two (2) years. [If a person is convicted of the offense of driving a motor vehicle under the influence of intoxicating liquor, the person's license shall not be automatically suspended if the court places the person on probation and either requires as a condition of probation that the person attend an educational program designed to rehabilitate persons who have driven while intoxicated as provided by Article 42.13, Code of Criminal Procedure, 1965, or waives that requirement, or the jury recommends, under Section 3a, Article 42.13, Code of Criminal Procedure, 1965, as amended, probation and no suspension of the person's license. The probation officer shall report to the court whether or not the person has completed the program. If the person fails to complete the program, the person's license shall be automatically suspended as provided by Subdivision (2) of Subsection (a) of this section.]

"(f) The court shall credit toward the period of suspension of a person's license required by this article a period of suspension imposed on the person for refusal to give a specimen under Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), if the refusal followed an arrest for the same offense for which the court is suspending the person's license under this article.

"(g) (1) Except as provided by Subdivision (2) of this subsection, the Department may not, during the period of probation, suspend the driver's license, permit, or nonresident operating privilege of a person if the person is required under Section 6c, Article 42.13, Code of Criminal Procedure, 1965, to attend and successfully complete an educational program designed to rehabilitate persons who have driven while intoxicated. The Department also may not suspend the driver's license, permit, or nonresident operating privilege of a person for whom the jury has recommended, under Section 3a, Article 42.13, Code of Criminal Procedure, 1965, no suspension.

"(2) After the date has passed, according to records of the Department, for successful completion of an educational program designed to rehabilitate persons who have driven while intoxicated, if the records do not indicate successful completion of the program, the Director shall suspend the person's driver's license, permit, or nonresident operating privilege or, if the person is a resident without a license or permit to operate a motor vehicle in this state, shall issue an order prohibiting the person from obtaining a license or permit. A suspension or prohibition order under this subsection is effective for a period of twelve (12) months.

"(3) The Director shall promptly send notice of a suspension or prohibition order issued under this subsection, by certified mail, return receipt requested, to

the person at the person's most recent address as listed in records of the Department. The notice must include the date of the suspension or prohibition order, the reason for the suspension or prohibition, and the beginning and ending dates of the suspension or prohibition. A suspension or prohibition under this subsection may not take effect before the twenty-eighth (28th) day after the date the person receives notice by certified mail or the thirty-first (31st) day after the Director sends notice by certified mail, if the person has not accepted delivery of the notice. The notice must also include a statement that the person has a right to demand in writing that a hearing on the suspension or prohibition be held. If, not later than the twentieth (20th) day after the date on which the person receives notice by certified mail or the twenty-third (23rd) day after the date the Director sent notice by certified mail, if the person has not accepted delivery of the notice, the Department receives a written demand that a hearing be held, the Department shall, not later than the tenth (10th) day after the day of receipt of the demand, request a court to set the hearing for the earliest possible date. If a person demands a hearing as provided by this subsection, the suspension or prohibition does not take effect until resolution of the hearing.

"(4) A hearing on suspension or prohibition shall be held in a municipal or justice court in the county of the person's residence in the manner provided for a hearing on suspension under Section 22(a) of this Act. At a hearing, the issues to be determined are whether the person has successfully completed an educational program that was imposed under Section 6c, Article 42.13, Code of Criminal Procedure, 1965, and whether the period for completion of the program has passed. If the court determines that the educational program imposed has not been completed and the period for completion of the program has passed, the court shall confirm the suspension or prohibition and notify the Department of that fact. If the court finds that the program imposed has been completed or that the period for completion has not passed, the court shall direct the Department to promptly rescind the order and reinstate in the records of the Department any driver's license, permit, or privilege of the person. The court may modify or revoke an order of suspension or prohibition if the court determines for good cause shown that the person was unable to complete an educational program within the period originally specified by the court. The court shall condition the modification or revocation of the order on the person's completion of the course within a period specified by the court not to exceed 181 days from the date of the hearing.

"(h) The Department shall suspend the license of a person on receiving an order from a juvenile court under Section 54.042, Family Code, to suspend that person's license. The period of the suspension shall be until the person reaches the age at which he may legally purchase alcoholic beverages or for a period of one year, whichever period is longer."

SECTION 3. Article 67011-1, Revised Statutes, as amended, is amended to read as follows:

"Article 67011-1. INTOXICATED DRIVER; PENALTY. (a) In this article:

"(1) 'Alcohol concentration' means:

"(A) the number of grams of alcohol per 100 milliliters of blood;

"(B) the number of grams of alcohol per 210 liters of breath; or

"(C) the number of grams of alcohol per 67 milliliters of urine.

"(2) 'Intoxicated' means:

"(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body; or

"(B) having an alcohol concentration of 0.10 percent or more.

"(3) 'Serious bodily injury' means injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

"(4) 'Public place' has the meaning assigned by Section 1.07(a)(29), Penal Code.

"(5) 'Controlled substance' has the meaning assigned by Subdivision (5), Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

"(6) 'Drug' has the meaning assigned by Subdivision (14), Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

"(b) A person commits an offense if the person is intoxicated while driving or operating a motor vehicle in a public place. The fact that any person charged with a violation of this section is or has been entitled to use a controlled substance or drug under the laws of this state is not a defense.

"(c) Except as provided by Subsections (d), (e), and (f) of this article, an offense under this article is punishable by:

"(1) a fine of not less than \$100 or more than \$2,000; and

"(2) confinement in jail for a term of not less than 72 hours or more than two years.

"(d) If it is shown on the trial of an offense under this article that the person has previously been convicted one time of an offense under this article, the offense is punishable by:

"(1) a fine of not less than \$300 or more than \$2,000; and

"(2) confinement in jail for a term of not less than 15 days or more than two years.

"(e) If it is shown on the trial of an offense under this article that the person has previously been convicted two or more times of an offense under this article, the offense is punishable by:

"(1) a fine of not less than \$500 or more than \$2,000; and

"(2) confinement in jail for a term of not less than 30 days or more than two years or imprisonment in the state penitentiary for a term of not less than 60 days or more than five years.

"(f) If it is shown on the trial of a person punished for an offense under Subsection (c), (d), or (e) of this article that the person committed the offense and as a direct result of the offense another person suffered serious bodily injury, the minimum term of confinement for the offense is increased by 60 days and the minimum and maximum fines for the offense are increased by \$500.

"(g) For the purposes of this article, a conviction for an offense under Article 67011-1 or 67011-2, Revised Statutes, as those laws existed before January 1, 1984, is a conviction of an offense under this article.

"(h) For the purposes of this article, a conviction for an offense that occurs on or after January 1, 1984, is a final conviction, whether or not the sentence for the conviction is probated.

"(i) A conviction may not be used for the purpose of enhancement under Subsection (d) or (e) of this article if:

"(1) the conviction was a final conviction under the provisions of Subsections (g) and (h) of this article and was for an offense committed more than 10 years before the offense for which the person is being tried was committed; and

"(2) the person has not been convicted of an offense under Section 19.05(a)(2), Penal Code, or Article 67011-1, or Article 67011-2, Revised Statutes, committed within 10 years immediately preceding the date on which the offense for which the person is being tried was committed. [Any person who drives or operates an automobile or any other motor vehicle upon any public road or highway in this State, on a beach as defined in the Uniform Act Regulating Traffic

on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or upon any street or alley within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating liquor, shall be guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail for not less than three (3) days nor more than two (2) years, and by a fine of not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars. Provided, however, that the presiding judge in such cases at his discretion may commute said jail sentence to a probation period of not less than six (6) months;]"

SECTION 4. Sections 1, 2, and 3, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 6701l-5, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 1. Any person who operates a motor vehicle upon the public highways or upon a public beach in [of] this state shall be deemed to have given consent, subject to the provisions of this Act, to submit to the taking of one or more specimens [a chemical test, or tests,] of his breath or blood for the purpose of analysis to determine the alcohol concentration or the presence in his body of a controlled substance or drug [determining the alcoholic content of his blood] if arrested for any offense arising out of acts alleged to have been committed while a person was driving or in actual physical control of a motor vehicle while intoxicated [under the influence of intoxicating liquor]. Any person so arrested may consent to the giving [taking] of any other type of specimen [chemical test, or tests,] to determine his alcohol concentration [the alcoholic content of his blood], but he shall not be deemed, solely on the basis of his operation of a motor vehicle upon the public highways or upon a public beach in [of] this state, to have given consent to give any type of specimen [chemical test] other than a specimen [chemical test, or tests,] of his breath or blood. The specimen [test], or specimens [tests], shall be taken [administered] at the request [direction] of a peace [law enforcement] officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways or upon a public beach in [of] this state while intoxicated [under the influence of intoxicating liquor].

"Section 2. (a) Except as provided by Subsection (i) of Section 3 of this Act, if [If] a person under arrest refuses, upon the request of a peace [law enforcement] officer, to give [submit to] a specimen [chemical breath test] designated by the peace [law enforcement] officer as provided in Section 1, none shall be taken. [given, but the Texas Department of Public Safety, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this State while under the influence of intoxicating liquor and that the person had refused to submit to the breath test upon the request of the law enforcement officer,]

"(b) Before requesting a person to give a specimen, the officer shall inform the person orally and in writing that if the person refuses to give the specimen, that refusal may be admissible in a subsequent prosecution, and that the person's license, permit, or privilege to operate a motor vehicle will be automatically suspended for 90 days after the date of adjournment of the hearing provided for in Subsection (f) of this section, whether or not the person is subsequently prosecuted as a result of the arrest. If the officer determines that the person is a resident without a license or permit to operate a motor vehicle in this state, the officer shall inform the person that the Texas Department of Public Safety shall deny to the person the issuance of a license or permit for a period of 90 days after the date of adjournment of the hearing provided for in Subsection (f) of this section, whether or not the person is subsequently prosecuted as a result of the

arrest. The officer shall inform the person that the person has a right to a hearing on suspension or denial if, not later than the 20th day after the date on which the notice of suspension or denial is received, the department receives a written demand that the hearing be held.

"(c) The officer shall provide the person with a written statement containing the information required by Subsection (b) of this section. If the person refuses the request of the officer to give a specimen, the officer shall request the person to sign a statement that the officer requested that he give a specimen, that he was informed of the consequences of not giving a specimen, and that he refused to give a specimen.

"(d) If the person refuses to give a specimen, whether the refusal was express or the result of an intentional failure of the person to give a specimen as designated by the peace officer, the officer before whom the refusal was made shall immediately make a written report of the refusal to the Director of the Texas Department of Public Safety.

"(e) The director shall approve the form of the report. The report must show the grounds for the officer's belief that the person had been operating a motor vehicle while intoxicated. The report must also show that the person refused to give a specimen, as evidenced by:

"(1) a written refusal to give a specimen, signed by the person; or

"(2) a statement signed by the officer stating that the person refused to give a specimen and also refused to sign the statement requested by the officer under Subsection (c) of this article.

"(f) When the director receives the report, the director shall suspend the person's license, permit, or nonresident operating privilege, or shall issue an order prohibiting the person from obtaining a license or permit, for 90 days effective 28 days after the date the person receives notice by certified mail or 31 days after the date the director sends notice by certified mail, if the person has not accepted delivery of the notice. If, not later than the 20th day after the date on which the person receives notice by certified mail or the 23rd day after the date the director sent notice by certified mail, if the person has not accepted delivery of the notice, the department receives a written demand that a hearing be held, the department shall, not later than the 10th day after the day of receipt of the demand, request a court to set the hearing for the earliest possible date. The hearing shall be set in the same manner as [matter for] a hearing under [as provided in] Section 22(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes). If[,if], upon such hearing the court finds (1) that probable cause existed that such person was driving or in actual physical control of a motor vehicle on the highway or upon a public beach while intoxicated [under the influence of intoxicating liquor at the time of the arrest by the officer], (2) that the person was placed under arrest by the officer [at such time] and was offered [before offering the person] an opportunity to give a specimen [be tested] under the provisions of this Act, and (3) that such person refused to give a specimen [submit to the test] upon request of the officer, then the Director of the Texas Department of Public Safety shall suspend the person's license or permit to drive, or any nonresident operating privilege for a [the] period of 90 days, as ordered by the court[, but not to exceed one (1) year]. If the person is a resident without a license or permit to operate a motor vehicle in this State, the Texas Department of Public Safety shall deny to the person the issuance of a license or permit for 90 days [a period ordered by the court, but not to exceed one (1) year].

"(g) If, after the hearing, the court finds in the negative one of the issues required by Subsection (f) of this section, the director shall reinstate any license, permit, or privilege to operate a motor vehicle and shall rescind any order prohibiting the issuance of a license or permit on the basis of the person's refusal

to give a specimen under Subsection (d) of this section. [Provided, however, that should such person be found 'not guilty' of the offense of driving while under the influence of intoxicating liquor or if said cause be dismissed, then the Director of the Texas Department of Public Safety shall in no case suspend such person's driver's license; or, in the event that proceedings had been instituted resulting in the suspension of such person's driver's license, then the Director of the Texas Department of Public Safety shall immediately reinstate such license upon notification of such acquittal or dismissal by the county clerk of the county in which the case was pending. Notification to the Director of the Texas Department of Public Safety shall be made by certified mail.]

"(h) A written report submitted by an officer under Subsection (d) of this article is a governmental record for the purposes of Section 37.10, Penal Code.

"Section 3. (a) Upon the trial of any criminal action or proceeding arising out of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes [~~acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle and while under the influence of intoxicating liquor~~], evidence of the alcohol concentration or presence of a controlled substance or drug [~~amount of alcohol in the person's blood at the time of the act alleged~~] as shown by [~~chemical~~] analysis of a specimen of the person's [~~his~~] blood, breath, urine, or any other bodily substances taken at the request or order of a peace officer [~~substance~~], shall be admissible [~~and if there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor~~].

"(b) Analysis [~~Chemical analysis~~] of a specimen of the person's breath, to be considered valid under the provisions of this section, must be performed according to rules of [~~methods approved by~~] the Texas Department of Public Safety and by an individual possessing a valid certificate issued by the Texas Department of Public Safety for this purpose. The Texas Department of Public Safety is authorized to establish rules approving [~~approve~~] satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analysis, and to issue certificates certifying such fact. These certificates shall be subject to termination or revocation, for cause, at the discretion of the Texas Department of Public Safety.

"(c) When a person gives a specimen of blood [~~shall submit to a blood test~~] at the request or order of a peace [~~law enforcement~~] officer under the provisions of this Act, only a physician, qualified technician, chemist, registered professional nurse, or licensed vocational nurse under the supervision or direction of a licensed physician may withdraw a blood specimen for the purpose of determining the alcohol concentration or presence of a controlled substance or drug [~~alcoholic content~~] therein. The sample must be taken by a physician or in a physician's office or a hospital licensed by the Texas Department of Health. This limitation shall not apply to the taking of [~~breath~~] specimens of breath, urine, or bodily substances other than blood. The person drawing the blood specimen at the request or order of a peace [~~law enforcement~~] officer under the provisions of this Act, or the hospital where that person is taken for the purpose of securing the blood specimen, shall not be held liable for damages arising from the request or order of the peace [~~law enforcement~~] officer to take the blood specimen as provided herein, provided the blood specimen was withdrawn according to recognized medical procedures, and provided further that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood specimen [~~sample~~]. Breath specimens taken at the request or order of a peace officer must be taken and analysis made under such conditions as may be prescribed by the Texas Department of Public Safety, and by such persons as the Texas Department of Public Safety has certified to be qualified.

"(d) The person who gave a specimen of breath, blood, urine, or other bodily substances in connection with this Act [tested] may, upon request and within a reasonable time not to exceed two hours after the arrest, have a physician, qualified technician, chemist, or registered professional nurse of his own choosing draw a specimen and have an analysis made of his blood [administer a chemical test, or tests,] in addition to any specimen taken and analyzed [administered] at the direction of a peace [law enforcement] officer. The failure or inability to obtain an additional specimen or analysis [test] by a person shall not preclude the admission of evidence relating to the analysis of the specimen [test, or tests,] taken at the direction of the peace [law enforcement] officer under this Act.

"(e) Upon the request of a person who has given a specimen [submitted to a chemical test, or tests,] at the request of a peace [law enforcement] officer, full information concerning the analytical results of the test[;] or tests of the specimen[;] shall be made available to him or his attorney.

"(f) If for any reason the person's request to have a chemical test [for intoxication] is refused by the officer or any other person acting for or on behalf of the state, such fact may be introduced into evidence on the trial of such person.

"(g) If the person refuses a request by an officer to give a specimen of breath or blood, whether the refusal was express or the result of an intentional failure of the person to give the specimen, that fact may be introduced into evidence at the person's trial.

"(h) Any person who is dead, unconscious, or otherwise in a condition rendering the person incapable of refusal, whether the person was arrested or not, shall be deemed not to have withdrawn the consent provided by Section 1 of this Act. If the person is dead, a specimen may be withdrawn by the county medical examiner or the examiner's designated agent or, if there is no county medical examiner for the county, by a licensed mortician or a person authorized as provided by Subsection (c) of this section. If the person is not dead but is incapable of refusal, a specimen may be withdrawn by a person authorized as provided by Subsection (c) of this section. Evidence of alcohol concentration or the presence of a controlled substance or drug obtained by an analysis authorized by this subsection is admissible in a civil or criminal action.

"(i) A peace officer shall require a person to give a specimen under Section 2 of this Act if:

"(1) the officer arrests the person for an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, as amended;

"(2) the person was the operator of a motor vehicle involved in an accident that the officer reasonably believes occurred as a result of the offense;

"(3) at the time of the arrest the officer reasonably believes that a person has died or will die as a direct result of the accident; and

"(4) the person refuses the officer's request to voluntarily give a specimen.

"(j) In this Act:

"(1) 'Alcohol concentration' means:

"(A) the number of grams of alcohol per 100 milliliters of blood;

"(B) the number of grams of alcohol per 210 liters of breath; or

"(C) the number of grams of alcohol per 67 milliliters of urine.

"(2) 'Controlled substance' has the same meaning as is given that term in Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

"(3) 'Drug' has the same meaning as is given that term in Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

"(4) 'Intoxicated' means:

“(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body; or

“(B) having an alcohol concentration of 0.10 percent or more.

“(5) ‘Public beach’ has the same meaning as is given that term in the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon’s Texas Civil Statutes).

“(6) ‘Public highway’ has the same meaning as is given the term ‘highway’ in the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon’s Texas Civil Statutes).

“(7) ‘Public place’ has the meaning assigned by Subdivision (29), Section 1.07(a), Penal Code.”

SECTION 5. Section 4.05, Code of Criminal Procedure, 1965, is amended to read as follows:

“Art. 4.05. JURISDICTION OF DISTRICT COURTS. District courts and criminal district courts shall have original jurisdiction in criminal cases of the grade of felony, [and] of all misdemeanors involving official misconduct, and of misdemeanor cases transferred to the district court under Article 4.17 of this code.”

SECTION 6. Chapter 4, Code of Criminal Procedure, 1965, is amended by adding Article 4.17 to read as follows:

“Art. 4.17. TRANSFER OF DRIVING WHILE INTOXICATED CASES. On a plea of not guilty to a misdemeanor offense under Article 67011-1, Revised Statutes, entered in a county court of a judge who is not a licensed attorney, on the motion of the state or the defendant, the judge may transfer the case to a district court having jurisdiction in the county or to a county court at law in the county presided over by a judge who is a licensed attorney. The judge may make the transfer on his own motion.”

SECTION 7. Section 1, Article 38.33, Code of Criminal Procedure, 1965, is amended to read as follows:

“Section 1. DOCUMENTS FILED. When a person is finally convicted of an offense of driving while intoxicated or of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code [or driving while under the influence of drugs], the clerk of the court shall mail a notice of the conviction to the sheriff of the county in which the offense occurred. The sheriff shall compile and send to the clerk a copy of the defendant’s signature, fingerprint, and driver’s license number and copies of any photograph, picture, description, [fingerprint,] or measurement of the defendant made by a law enforcement agency in connection with that offense. The clerk shall forward to the department of public safety those documents and any complaint, information, indictment, judgment, sentence, mandate, or written waiver or motion in possession of the clerk pertaining to the conviction and the name of the attorney of record in that case.”

SECTION 8. Section 3d, Article 42.12, Code of Criminal Procedure, 1965, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

“(a) Except as provided by Subsection (d) of this section, when [When] in its opinion the best interest of society and the defendant will be served, the court may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant’s guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on probation for a period as the court may prescribe, not to exceed 10 years. The court may impose a fine applicable to the offense and require any reasonable terms and conditions of probation, including any of the conditions enumerated in Sections 6 and 6a of this Article. However, upon written motion of the defendant requesting

final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the court shall proceed to final adjudication as in all other cases."

"(d) This section does not apply to a defendant charged with an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, as amended."

SECTION 9. Section 4, Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

"Section 4. (a) When directed by the court, a probation officer shall fully investigate and report to the court in writing the circumstances of the offense, criminal record, social history and present condition of the defendant. Whenever practicable, such investigation shall include a physical and mental examination of the defendant. Defendant, if not represented by counsel, counsel for defendant and counsel for the state shall be afforded an opportunity to see a copy of the report upon request. If a defendant is committed to any institution the probation officer shall send a report of such investigation to the institution at the time of commitment.

"(b) Except as otherwise provided by this subsection, if a defendant is charged with an offense under Article 67011-1, Revised Statutes, and the offense is punishable under Subsection (c) of that article, the court shall direct a probation officer or other person approved by the probation department for that purpose to conduct an evaluation to determine the appropriateness of alcohol or drug rehabilitation for the defendant and to report that evaluation to the court. The evaluation may be made at any time, except that if the defendant elects to have a jury assess punishment, the court may not order an evaluation until after sentencing. The court is not required to request an evaluation and report if it determines that the resources required to properly conduct the evaluation are not available in the county."

SECTION 10. Section 6, Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

"Section 6. (a) The court having jurisdiction of the case shall determine the terms and conditions of probation and may, at any time, during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket. Terms and conditions of probation may include, but shall not be limited to, the conditions that the probationer shall:

"a. Commit no offense against the laws of this State or of any other State or of the United States;

"b. Avoid injurious or vicious habits;

"c. Avoid persons or places of disreputable or harmful character;

"d. Report to the probation officer as directed by the judge or probation officer and obey all rules and regulations of the probation department;

"e. Permit the probation officer to visit him at his home or elsewhere;

"f. Work faithfully at suitable employment as far as possible;

"g. Remain within a specified place;

"h. Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the court shall determine;

"i. Support his dependents;

"j. Participate in any community-based program;

"k. Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed, or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;

“l. Remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

“m. Pay a percentage of his income to his dependents for their support while under custodial suspension in a community-based facility; and

“n. Pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense.

“(b) If the court grants probation to a person convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, the court may require as a condition of probation that the person participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Sections 10A(c), (d), (g), and (h) of this article, in a community-service work program designated by the court.”

SECTION 11. Section 6b, Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

“Section 6b. (a) When the court having jurisdiction of the case grants probation to the defendant, in addition to the conditions imposed under Section 6 of this article, the court may require as a condition of probation that the defendant submit to a period of detention in a penal institution to serve a term of imprisonment not to exceed 30 days or one-third of the sentence whichever is lesser.

“(b) A court granting probation to a defendant convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (d), (e), or (f) of that article shall require as a condition of probation that the defendant submit to:

“(1) 72 hours of detention in a jail if the defendant was convicted under Subsection (d) of Article 67011-1, Revised Statutes, as amended; 10 days of detention in a jail if the defendant was convicted under Subsection (e) of Article 67011-1, Revised Statutes, as amended; or 30 days of detention in a jail if the defendant was convicted under Subsection (f) of Article 67011-1, Revised Statutes, as amended; and

“(2) an evaluation by a probation officer, by a person approved by the probation department, or by a program or facility approved by the Texas Commission on Alcoholism for the purpose of having the facility prescribe a course of conduct necessary for the rehabilitation of the defendant’s drug or alcohol dependence condition.

“(c) A court granting probation to a defendant convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, shall require as a condition of probation that the defendant submit to a period of detention in a penal institution to serve a term of confinement of not less than 60 days.

“(d) If the director of a facility to which a person is referred under Subdivision (2) of Subsection (b) of this article determines that the person is not making a good faith effort to participate in a program of rehabilitation, the director shall notify the court that referred the person of that fact.

“(e) If a court requires as a condition of probation that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant’s drug or alcohol dependence condition, the court shall require that the defendant pay for all or part of the cost of such rehabilitation based on the defendant’s ability to pay. The court may, in its discretion, credit such cost paid by the defendant against the fine assessed.

“(f) The imprisonment imposed shall be treated as a condition of probation, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent imprisonment.”

SECTION 12. Section 7, Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

"Section 7. At any time, after the defendant has satisfactorily completed one-third of the original probationary period or two years of probation, whichever is the lesser, the period of probation may be reduced or terminated by the court. Upon the satisfactory fulfillment of the conditions of probation, and the expiration of the period of probation, the court, by order duly entered, shall amend or modify the original sentence imposed, if necessary, to conform to the probation period and shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere to an offense other than an offense under Section 19.05(a)(2), Penal Code, or an offense under Article 67011-1, Revised Statutes, and the court has discharged the defendant hereunder, such court may set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty, except that proof of his said conviction or plea of guilty shall be made known to the court should the defendant again be convicted of any criminal offense."

SECTION 13. Subsection (a), Section 10A, Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

"(a) Except for a defendant charged with an offense under Article 67011-1, Revised Statutes, as amended, a [A] defendant who pleads guilty or nolo contendere to a first offense felony that does not involve bodily injury or the threat of bodily injury to any person and for which the maximum punishment assessed against the defendant does not exceed 10 years' imprisonment is eligible for community-service restitution probation."

SECTION 14. Section 3a, Article 42.13, Code of Criminal Procedure, 1965, is amended to read as follows:

"Section 3a. Where there is a conviction in any court of this state and the punishment assessed by the jury shall be by imprisonment in jail or by a fine or by both such fine and imprisonment, the jury may recommend probation for a period of the maximum imprisonment applicable to such offense of which the defendant is convicted, upon sworn motion made therefor by the defendant, filed before the penalty stage of the trial begins. When the jury recommends probation for a person convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (c) of that article, it may recommend that the imprisonment or fine or both such fine and imprisonment found in its verdict may be probated and may recommend that any operator's, commercial operator's, or chauffeur's license issued to the defendant under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), not be suspended. When the trial is to a jury and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the defendant, before the trial began, had filed a sworn statement that the defendant has never before been convicted of a felony, and after conviction and before the penalty stage of the trial began, the defendant shall have filed a sworn motion for probation and the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other state. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but the defendant may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict.

“If probation is granted by the jury, the court may impose only those conditions which are set out in Section 6, 6a, or 6b[, or 6c] hereof. The court may impose any one or all of those conditions. If probation is granted by the jury for a person convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (c) of that article, the court shall impose as a condition the condition set out in Section 6c of this article.”

SECTION 15. Subsection (a), Section 3B, Article 42.13, Code of Criminal Procedure, 1965, as added by Section 1, Chapter 807, Acts of the 66th Legislature, 1979, is amended to read as follows:

“(a) Except for a defendant charged with an offense under Article 67011-1, Revised Statutes, as amended, a [A] defendant who pleads guilty or nolo contendere to a first offense misdemeanor that does not involve bodily injury or the threat of bodily injury to any person and for which the maximum permissible punishment is by confinement in jail or by a fine in excess of \$200 or by both a fine and confinement is eligible for community-service probation.”

SECTION 16. Section 3d, Article 42.13, Code of Criminal Procedure, 1965, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

“(a) Except as provided by Subsection (d) of this section, when [When] in its opinion the best interest of society and the defendant will be served, the court may, after receiving a plea of guilty or a plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant’s guilt, defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period as the court may prescribe, not to exceed the maximum period of imprisonment prescribed for the offense for which the defendant is charged. The court may impose a fine applicable to the offense and require any reasonable terms and conditions of probation, including any of the conditions enumerated in Sections 6, 6a, and 6c of this Article. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the court shall proceed to final adjudication as in all other cases.

“(d) This section does not apply to a defendant charged with an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, as amended.”

SECTION 17. Section 4, Article 42.13, Code of Criminal Procedure, 1965, is amended to read as follows:

“Section 4. (a) When directed by the court, a probation officer shall fully investigate and report to the court in writing the circumstances of the offense, criminal record, social history and present condition of the defendant. Whenever practicable, such investigation shall include a physical and mental examination of the defendant. Defendant, if not represented by counsel, counsel for defendant, and counsel for the state shall be afforded an opportunity to see a copy of the report upon request. If a defendant is committed to any institution, the probation officer shall send a report of such investigation to the institution at the time of commitment.

“(b) Except as otherwise provided by this subsection, if a defendant is charged with an offense under Article 67011-1, Revised Statutes, and the offense is punishable under Subsection (c) of that article, the court shall direct a probation officer or other person approved by the probation department for that purpose to conduct an evaluation to determine the appropriateness of alcohol or drug rehabilitation for the defendant and to report that evaluation to the court. The evaluation may be made at any time, except that if the defendant elects to have a jury assess punishment, the court may not order an evaluation until after sentencing. The court is not required to request an evaluation and report if it

determines that the resources required to properly conduct the evaluation are not available in the county."

SECTION 18. Section 6, Article 42.13, Code of Criminal Procedure, 1965, is amended to read as follows:

"Section 6. (a) The court having jurisdiction of the case shall determine the terms and conditions of probation and may at any time during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer and shall note the date of delivery of such delivery on the docket. Terms and conditions of probation may include but shall not be limited to the conditions that the probationer shall:

"(1) commit no offense against the laws of this state or of any other state or of the United States;

"(2) avoid injurious or vicious habits;

"(3) avoid persons or places of disreputable or harmful character;

"(4) report to the probation officer as directed by the court or probation officer and obey all rules and regulations of the probation department;

"(5) permit the probation officer to visit him at his home or elsewhere;

"(6) work faithfully at suitable employment as far as possible;

"(7) remain within a specified place;

"(8) pay his fine, if one be assessed; and all court costs, whether a fine be assessed or not, in one or several sums and make restitution or reparation in any sum that the court shall determine;

"(9) support his dependents;

"(10) participate in any community-based program or participate in an alcohol or drug abuse treatment or education program and abstain from the use of alcoholic beverages or specified drugs at all times or under certain circumstances;

"(11) reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;

"(12) remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

"(13) pay a percentage of his income to his dependents for their support while under custodial supervision in the community-based facility; and

"(14) pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense.

"(b) If the court grants probation to a person convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, the court may require as a condition of probation that the person participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Sections 3B(c), (d), (g), and (h) of this article, in a community-service work program designated by the court."

SECTION 19. Section 6b, Article 42.13, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

"Section 6b. (a) When the court having jurisdiction of the case grants probation to the defendant, in addition to the conditions imposed under Section 6 of this article, the court may require as a condition of probation that the defendant submit to a period of detention in jail to serve a term of imprisonment not to exceed 30 days or one-third of the sentence, whichever is lesser.

“(b) A court granting probation to a defendant convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (d), (e), or (f) of that article shall require as a condition of probation that the defendant submit to:

“(1) 72 hours of detention in a jail if the defendant was convicted under Subsection (d) of Article 67011-1, Revised Statutes, as amended; 10 days of detention in a jail if the defendant was convicted under Subsection (e) of Article 67011-1, Revised Statutes, as amended; or 30 days of detention in a jail if the defendant was convicted under Subsection (f) of Article 67011-1, Revised Statutes, as amended; and

“(2) an evaluation by a probation officer, by a person approved by the probation department, or by a program or facility approved by the Texas Commission on Alcoholism for the purpose of having the facility prescribe a course of conduct necessary for the rehabilitation of the defendant’s drug or alcohol dependence condition.

“(c) A court granting probation to a defendant convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, shall require as a condition of probation that the defendant submit to a period of detention in a penal institution to serve a term of confinement of not less than 60 days.

“(d) If the director of a facility to which a person is referred under Subdivision (2) of Subsection (b) of this article determines that the person is not making a good faith effort to participate in a program of rehabilitation, the director shall notify the court that referred the person of that fact.

“(e) If a court requires as a condition of probation that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant’s drug or alcohol dependence condition, the court shall require that the defendant pay for all or part of the cost of such rehabilitation based on the defendant’s ability to pay. The court may, in its discretion, credit such cost paid by the defendant against the fine assessed.

“(f) The imprisonment imposed shall be treated as a condition of probation, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent imprisonment.”

SECTION 20. Section 6c, Article 42.13, Code of Criminal Procedure, 1965, is amended to read as follows:

“Section 6c. If a person convicted of an offense under Article 67011-1, Revised Civil Statutes of Texas, 1925, as amended, is punished under Subsection (c) of that article, and is placed on probation, the court shall require, as a condition of the probation, that the defendant attend and successfully complete before the 181st day after the day probation is granted an educational program jointly approved by the Texas Commission on Alcoholism, the Texas Department of Public Safety, the Traffic Safety Section of the State Department of Highways and Public Transportation, and the Texas Adult Probation Commission designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcoholism shall publish the jointly approved rules and regulations and shall monitor and coordinate the educational programs. Persons who have successfully completed an approved educational program or who are currently under an order to attend an educational program shall not be eligible for attendance upon a subsequent offense. The judge may waive the educational program requirement, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider, but is not limited to: the offender’s school and work schedule, the offender’s health, the distance which the offender must travel to attend an educational program, and the fact that the offender resides out-of-state, has no valid driver’s license or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a person is

required, as a condition of probation, to attend an educational program, the court clerk shall immediately report such fact to the Texas Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. The report must include the beginning date of the person's probation. Upon the successful completion of the educational program, the person shall give notice to the probation department. The probation department shall then forward the notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Texas Department of Public Safety for inclusion in the person's driving record. If the department does not receive notice that a person required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall suspend the person's driver's license, permit, or privilege, or prohibit the person from obtaining a license or permit, as provided by Subsection (g)(2), Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes). ~~[No report of the offense for which the educational program was required as a condition of probation shall be made to the Texas Department of Public Safety unless the person fails to comply with the terms of the probation order. Information regarding the required attendance or successful completion of an educational program may not be used for any purpose other than to determine eligibility under this section.]~~"

SECTION 21. Section 7, Article 42.13, Code of Criminal Procedure, 1965, is amended to read as follows:

"Section 7. At any time after the defendant has satisfactorily completed one-third of the original probationary period, the period of probation may be reduced or terminated by the court. Upon the satisfactory fulfillment of the conditions of probation and the expiration of the period of probation, the court by order duly entered shall amend or modify the original sentence imposed, if necessary, to conform to the probation period and shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere to an offense other than an offense under Section 19.05(a)(2), Penal Code, or an offense under Article 67011-1, Revised Statutes, and the court has discharged the defendant hereunder, such court shall set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information, or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which defendant has been convicted or to which defendant has pleaded guilty or pleaded nolo contendere, except that proof of defendant's conviction or plea of guilty or nolo contendere shall be made known to the court should the defendant again be convicted of any criminal offense."

SECTION 22. Subsection (a), Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:

"(a) When a person is charged with a misdemeanor offense under this Act, other than a violation of Section ~~[50 or]~~ 51, committed while operating a motor vehicle, the court:

"(1) in its discretion may defer proceedings and allow the person 90 days to present evidence that, subsequent to the alleged act, the person has successfully completed a defensive driver's course approved by the Texas Department of Public Safety or other driving safety course approved by the court; or

"(2) shall defer proceedings and allow the person 90 days to present written evidence that, subsequent to the alleged act, the person has successfully completed a driving safety course approved by the court, if:

"(A) the person presents to the court an oral request or written motion to take a course;

“(B) the person has a valid Texas driver’s license or permit; and

“(C) the person’s driving record as maintained by the Texas Department of Public Safety does not indicate successful completion of a driving safety course under this subdivision within the two years immediately preceding the date of the alleged offense.”

SECTION 23. Chapter 1A, Title 116, Revised Statutes, is amended by adding Articles 67011-6 and 67011-7 to read as follows:

“Art. 67011-6. ALLOWING DANGEROUS DRIVER TO BORROW MOTOR VEHICLE. (a) A person commits an offense if he knowingly or intentionally permits another to operate a motor vehicle owned by the person and he knows that at the time permission is given, the other person’s license has been suspended as a result of a conviction of an offense under Article 67011-1, Revised Statutes, or as a result of a failure to give a specimen under Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon’s Texas Civil Statutes).

“(b) An offense under this section is a Class C misdemeanor.

“Art. 67011-7. FORFEITURE OF MOTOR VEHICLE. (a) When a person is arrested for an offense under Section 19.05(a)(2), Penal Code, or an offense under Article 67011-1, Revised Statutes, the arresting officer shall immediately notify the district or the county attorney if:

“(1) the person was on probation for an offense under Section 19.05(a)(2), Penal Code, or an offense under Article 67011-1 or Article 67011-2, Revised Statutes, at the time of the arrest; or

“(2) the person has previously been finally convicted three or more times of:

“(A) an offense under Article 67011-1, Revised Statutes;

“(B) an offense under Article 67011-2, Revised Statutes;

“(C) an offense under Section 19.05(a)(2), Penal Code; or

“(D) any combination of offenses under Section 19.05(a)(2), Penal Code, and Section 67011-1 or 67011-2, Revised Statutes.

“(b) A motor vehicle owned and operated at the time of an offense by a person described by Subsection (a) of this article is subject to forfeiture to the county in which the offense occurred.

“(c) The district or the county attorney may seek a temporary restraining order prohibiting the person from selling or disposing of a vehicle described in Subsection (b) of this article and may, within 20 days from the date of the arrest, request a hearing in a county court or district court in the county to determine whether the vehicle is subject to forfeiture. The court in which the hearing is to be held shall set the cause for a hearing to be held no later than the 20th day after the date on which the district or the county attorney requests the hearing. The court shall serve notice of the hearing to the owner of the vehicle and to any lienholder or other secured party whose interest in the motor vehicle is registered as provided by law, in the manner provided for service of process by citation in civil cases.

“(d) If at a hearing requested under Subsection (c) of this article, the person arrested fails to file a denial stating that his motor vehicle is not subject to forfeiture, the court shall find that the vehicle is subject to forfeiture. If the person files a denial denying that the motor vehicle is subject to forfeiture, the court shall hear evidence to determine whether the vehicle is subject to forfeiture. If the court determines that the vehicle is subject to forfeiture, the court shall enter an order enjoining the person from selling or disposing of the vehicle pending the outcome of the prosecution of the person for the offense for which he was arrested. The court shall specify in the order that if the person is acquitted of the offense for which he was arrested, the injunction shall expire on the date of the acquittal. If after the court has issued an order under this subsection, the person proves by document

or other evidence satisfactory to the court that prosecution for the offense has been dismissed, the court shall terminate the injunction.

"(e) If at the trial of the person for the offense for which he was arrested, the person is convicted, the court sentencing the person, on the motion of the district or the county attorney, and on a showing that a court has determined that the vehicle is subject to forfeiture, shall forfeit the vehicle to the county. However, if proof at sentencing discloses that the interest of any bona fide lienholder, secured party, or other person holding an interest in the vehicle in the nature of a security interest is greater than or equal to the present value of the vehicle, the court shall order the vehicle released to him. If such interest is less than the present value of the vehicle and if the proof shows that the vehicle is subject to forfeiture, the court shall order the vehicle forfeited to the county.

"(f) A vehicle that has been forfeited shall be sold at a public auction under the direction of the county sheriff after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be delivered to the county clerk and shall be disposed of as follows:

"(1) to any bona fide lienholder, secured party, or other party holding an interest in the vehicle in the nature of a security interest, to the extent of his interest; and

"(2) the balance, if any, to be deposited in the county treasury.

"(g) The State Department of Highways and Public Transportation shall issue a certificate of title to any person who purchases a vehicle under the provisions of this article."

SECTION 24. (a) Each county with a population of 25,000 or more according to the most recent federal census shall purchase and maintain electronic devices capable of visually recording a person arrested within the county for an offense under Article 67011-1, Revised Statutes, or Section 19.05(a)(2), Penal Code.

(b) The sheriff of the county shall determine upon approval by the county commissioners court the number of devices necessary to ensure that a peace officer arresting a defendant for an offense listed in Subsection (a) of this section may visually record the defendant's appearance within a reasonable time after the arrest.

(c) The fact that an arresting officer or other person acting on behalf of the state failed to visually record a person arrested for an offense listed in Subsection (a) of this section is admissible at the trial of the offense if the offense occurred in a county required to purchase and maintain electronic devices under this section.

SECTION 25. Chapter 54, Family Code, is amended by adding Section 54.042 to read as follows:

"Sec. 54.042. LICENSE SUSPENSION. (a) When a child has been found to have engaged in conduct that violates the laws of this state prohibiting driving while intoxicated, if the juvenile court determines that the child has previously been found to have engaged in conduct violating the same laws, it shall order the Department of Public Safety to suspend the child's license or permit, or if the child does not have a license or permit, to deny the issuance of a license or permit to the child.

"(b) The order shall specify that the period of suspension or denial be until the person reaches the age at which he may legally purchase alcoholic beverages or for a period of one year, whichever period is longer."

SECTION 26. Chapter 5, Insurance Code, is amended by adding Article 5.03-1 to read as follows:

"Art. 5.03-1. PREMIUM SURCHARGE. Sec. 1. A premium surcharge, in an amount to be prescribed by the State Board of Insurance, may be assessed by an insurer defined in Article 5.01, Texas Insurance Code, against an insured for

no more than one policy year immediately following the date of conviction of the insured of an offense under Article 67011-1, Revised Statutes, or an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code. The premium surcharge shall be applied only to private passenger automobile policies as defined by the State Board of Insurance.

“Sec. 2. If an insured assessed a premium surcharge as a result of a conviction of an offense as set out in Section 1 of this Article is subsequently convicted of a violation of one of those statutes during the period he is assessed the premium surcharge, the period for which the premium surcharge may be imposed is increased by two additional consecutive policy years for each conviction.”

SECTION 27. Section 50, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon’s Texas Civil Statutes); Article 67011-2, Revised Statutes; and Chapter 436, Acts of the 52nd Legislature, 1951 (Article 67011-3, Vernon’s Texas Civil Statutes), are repealed.

SECTION 28. (a) A person who before the effective date of this Act refused to submit to a test is subject to the law in effect when the refusal occurred, and that law is continued in effect for the disposition of administrative proceedings against the person.

(b) The changes in law made by this Act for the punishment of an offense under Article 67011-1, Revised Statutes, as amended, apply only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act only if any element of the offense occurs before the effective date.

(c) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

(d) Article 5.03-1, Insurance Code, applies only for convictions of offense that occur after the effective date of this Act.

SECTION 29. This Act takes effect January 1, 1984.

SECTION 30. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - T. Smith

Amend C.S.S.B. 1 as follows:

(1) On page 29, strike the underlined language beginning on line 12 and ending on line 14.

(2) On page 29, line 16, strike “and” and substitute the following:

“If the jury recommends probation for a person convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (c) of that article, it [and]”.

Floor Amendment No. 2 - Barrientos

Amend C.S.S.B. 1 as follows:

On page 27, line 7, strike “60” and substitute “120”

Floor Amendment No. 3 - Salinas

Amend C.S.S.B. 1 as follows:

Strike lines 6 and 7 on page 7 and insert “specified by the court not to exceed one (1) year from the beginning date of the person’s probation.”

Floor Amendment No. 4 - Barrientos

Amend C.S.S.B. 1, on page 35, line 27 of the first printing by striking "60" and substituting "120".

Floor Amendment No. 5 - Gilley

Amend C.S.S.B. 1 on page 43, line 15, by striking "25,000" and substituting "75,000".

The amendments were read.

Senator Sarpalius moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 1 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sarpalius, Chairman; Farabee, Caperton, Glasgow, Lyon.

SENATE CONCURRENT RESOLUTION 129

Senator Brooks offered the following resolution:

S.C.R. 129, Acknowledging the accomplishments of General Bernardo de Galvez toward the American victory in the War of Independence.

The resolution was read.

On motion of Senator Brooks and by unanimous consent, the resolution was considered immediately and was adopted.

MESSAGE FROM THE HOUSE

House Chamber
May 23, 1983

HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has concurred in Senate amendments to **H.B. 730** by a non-record vote.

The House has concurred in Senate amendments to **H.C.R. 72** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 377** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1445** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 622** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 54** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 825** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1422** by a non-record vote.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1**. House Conferees: Smith of Travis, Chairman; Peveto, Keller, Hury, Toomey.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 149**. House Conferees: Messer, Chairman; Arnold, Russell, Wright, Coody.

The House has concurred in Senate amendments to **H.B. 1766** by a non-record vote.

The House has refused to concur in Senate amendments to **H.J.R. 59** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. House Conferees: Schlueter, Ceverha, Gerald Hill, Ashley Smith, Armbrister.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE CONCURRENT RESOLUTION 130

Senator Brown offered the following resolution:

WHEREAS, **H.B. 1505** has been passed by the Senate and returned to the House of Representatives; and

WHEREAS, Further consideration of the bill by the Senate is necessary; now, therefore, be it

RESOLVED by the Senate of the 68th Legislature, the House of Representatives concurring, That the Chief Clerk of the House be hereby authorized to return **H.B. 1505** to the Senate for further consideration.

The resolution was read.

On motion of Senator Brown and by unanimous consent, the resolution was considered immediately and was adopted.

SENATE BILL 1152 WITH HOUSE AMENDMENTS

Senator Brown called **S.B. 1152** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.
Committee Amendment No. 1 - Keller

Amend **S.B. 1152** on page 7 by adding after line 7 a new subsection as follows:

(4) he has satisfied his firearm training instructor that he has complied with the standards of marksmanship set by the board for minimum marksmanship competency with a shotgun.

Committee Amendment No. 2 - Keller

Amend **S.B. 1152** on page 7, line 2, by inserting between the words "attained" and "a" the phrase "with a handgun".

The amendments were read.

Senator Brown moved to concur in the House amendments.

The motion prevailed.

SENATE BILL 1141 WITH HOUSE AMENDMENTS

Senator Brown called S.B. 1141 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.
Committee Amendment No. 1 - DeLay

Substitute the following for S.B. 1141:

A BILL TO BE ENTITLED AN ACT

relating to the regulation of motor vehicle manufacturers, distributors, and sellers of new motor vehicles; to the protection of purchasers of new motor vehicles; to certain related legal actions by consumers; giving the Texas Motor Vehicle Commission certain powers and duties; imposing certain license fees; defining "motor vehicle" and "new motor vehicle"; providing different effective dates; amending Sections 1.03; 5.02; and 5.04; Subsections (h) and (j), Section 3.04; Subsection (a), Section 4.05; Subsections (b) and (c), Section 4.07; and adding Section 6.07, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.03, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1.03. DEFINITIONS. In this Act, unless the context requires a different definition:

"(1) 'Motor vehicle' means:

"(A) every fully self-propelled vehicle which has as its primary purpose the transport of a person or persons, or property, on a public highway, and having two or more wheels;

"(B) every two or more wheeled fully self-propelled, titled vehicle which has as its primary purpose the transport of a person or persons or property and is not manufactured for use on public streets, roads or highways; or

"(C) an engine, transmission, or rear axle manufactured for installation in a vehicle having as its primary purpose the transport of a person or persons or property on a public highway and having a gross vehicle weight rating of more than 16,000 pounds, whether or not attached to a vehicle chassis.

"(2) 'New motor vehicle' means a motor vehicle which has not been the subject of a 'retail sale' as defined in Subdivision (2), Section 152.001, Tax Code [Article 6.03(B), Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended].

"(3) 'Person' means every natural person, partnership, corporation, association, trust, estate, or any other legal entity.

"(4) 'Dealer' means any person engaged in the business of buying, selling or exchanging new motor vehicles at an established and permanent place of business pursuant to a franchise in effect with a manufacturer or distributor.

"(5) 'Manufacturer' means any person who manufactures or assembles new motor vehicles either within or without this State.

"(6) 'Distributor' means any person who distributes and/or sells new motor vehicles to dealers and who is not a manufacturer.

“(7) ‘Representative’ means any person who is or acts as an agent, employee or representative of a manufacturer or distributor who performs any duties in this State relating to promoting the distribution and/or sale of new motor vehicles or contacts dealers in this State on behalf of a manufacturer or distributor.

“(8) ‘Franchise’ means one or more contracts under which (A) the franchisee is granted the right to sell new motor vehicles manufactured or distributed by the franchisor; (B) the franchisee as an independent business is a component of franchisor’s distribution system; (C) the franchisee is substantially associated with franchisor’s trademark, tradename and commercial symbol; (D) the franchisee’s business is substantially reliant on franchisor for a continued supply of motor vehicles, parts, and accessories for the conduct of its business; or (E) any right, duty, or obligation granted or imposed by this Act is affected.

“(9) ‘Commission’ means the Texas Motor Vehicle Commission created by this Act.

“(10) ‘Broker’ means a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

“(A) a dealer or a bona fide agent or employee of a dealer;

“(B) a representative or a bona fide agent or employee of a representative;

“(C) a distributor or bona fide agent or employee of a distributor; or

“(D) at any point in the transaction the bona fide owner of the vehicle involved in the transaction.”

SECTION 2. Subsections (h) and (j), Section 3.04, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

“(h) The owner [A retail buyer] of a [new] motor vehicle may make a complaint concerning defects in a [new] motor vehicle which are covered by the manufacturer’s or distributor’s warranty agreement applicable to the vehicle. Such complaint must be made in writing [by letter] to the dealer and[, a copy of which shall be sent] to the applicable manufacturer or distributor, and must specify the defects in the vehicle which are covered by the warranty. The owner may make further complaint by sending to the Commission a copy of the complaint [letter]. The Commission may hold a hearing on all unsatisfied complaints to determine whether there has been a violation of the Act.

“(j) No dealer member of the Commission may participate in, deliberate on, hear, or consider, or decide any matter involving a protest or denial under Section 4.06(c), 5.02(3), 5.02(6), 5.02(11) or 5.02(13) of this Act involving [of an application to establish] a dealership franchised or proposed to be licensed to sell [the same] motor vehicles manufactured or distributed by the same person or a subsidiary or affiliate of the same person for which the dealer member is franchised.”

SECTION 3. Subsection (a), Section 4.05, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

“(a) The annual license fees for licenses issued hereunder shall be as follows:

“(1) For each manufacturer and distributor, \$500.00 [~~\$300.00~~].

“(2) For each dealer who sold [more than] 200 or fewer new motor vehicles during the preceding calendar year, \$100.00.

“(3) For each dealer who sold more than 200, but not more than 500, [or less] new motor vehicles during the preceding calendar year, \$150.00 [~~\$50.00~~].

“(4) For each dealer who sold more than 500, but not more than 1,000, new motor vehicles during the preceding calendar year, \$200.00 [~~representative; \$25.00~~].

“(5) For each dealer who sold more than 1,000 new motor vehicles during the preceding calendar year, \$250.00.

"(6) For each representative, \$50.00."

SECTION 4. Subsections (b) and (c), Section 4.07, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

"(b) The Commission may require its approval of the contents of notices required by Subsection (a) of this section or may prescribe the contents of required notices. The Commission shall prepare, publish and distribute information concerning an owner's rights under Section 6.07 of this Act and the retail seller of any new motor vehicle shall conspicuously post a copy of the information in the area where its customers usually make payment for repairs.

"(c) Failure to give the notice required by Subsections [Subsection] (a) and (b) of this section is a ground for suspension or revocation of a dealer's license."

SECTION 5. Section 5.02, The Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 5.02. MANUFACTURERS; DISTRIBUTORS; REPRESENTATIVES. It shall be unlawful for any manufacturer, distributor or representative to:

"(1) Require or attempt to require any dealer to order, accept delivery of or pay anything of value, directly or indirectly, for any motor vehicle, appliance, part, accessory or any other commodity unless voluntarily ordered or contracted for by such dealer.

"(2) Refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order to a dealer having a franchise agreement for the retail sale of any motor vehicles sold or distributed by such manufacturer, distributor, or representative, any new motor vehicle or parts or accessories to new motor vehicles as are covered by such franchise if such vehicle, parts or accessories are publicly advertised as being available for delivery or are actually being delivered; provided, however, this provision is not violated if such failure is caused by acts of God, work stoppage or delays due to strikes or labor disputes, freight embargoes or other causes beyond the control of the manufacturer, distributor, or representative.

"(3) Notwithstanding the terms of any franchise agreement, terminate or refuse to continue any franchise with a dealer unless (A) the dealer and the Commission have received written notice sixty days before the effective date thereof setting forth the specific grounds for termination or noncontinuance and (B) if the dealer files a protest with the Commission, it is established by a preponderance of evidence at a hearing called by the Commission that there is good cause for the termination or noncontinuance. The Commission shall consider all the existing circumstances in determining good cause, including without limitation the dealer's sales in relation to the market, the dealer's investment and obligations, injury to public welfare, adequacy of service facilities, equipment, parts and personnel of the dealer and other dealers of new motor vehicles of the same line-make, whether warranties are being honored, and compliance with the franchise agreement. Good cause shall not be shown solely by a desire for further market penetration. If a franchise is terminated or not continued, another franchise in the same line-make will be established within a reasonable time unless it is shown to the Commission that the community or trade area cannot reasonably support such a dealership. If this showing is made, no dealer license shall be thereafter issued in the same area unless a change in circumstances is shown.

"(4) Use any false, deceptive or misleading advertising, as defined in Section 17.12 of the Business and Commerce Code, as amended.

"(5) Notwithstanding the terms of any franchise agreement, prevent any dealer from changing the capital structure of his dealership or the means by or

through which he finances the operation thereof, provided that the dealer meets any reasonable capital requirements agreed to by contract of the parties.

“(6) Notwithstanding the terms of any franchise agreement, fail to give effect to or attempt to prevent any sale or transfer of a dealer, dealership or franchise or interest therein or management thereof unless it is shown to the Commission after hearing that the result of such sale, or transfer will be detrimental to the public or the representation of the manufacturer or distributor.

“(7) Require or attempt to require that a dealer assign to or act as an agent for any manufacturer, distributor or representative in the securing of promissory notes and security agreements given in connection with the sale or purchase of new motor vehicles or the securing of policies of insurance on or having to do with the operation of vehicles sold.

“(8) Fail, after complaint and hearing, to perform the obligations placed on the manufacturer in connection with the delivery, preparation and warranty of a new motor vehicle as provided in the manufacturer’s warranty, preparation, and delivery agreements on file with the Commission.

“(9) Fail to compensate its dealers for the work and services they are required to perform in connection with the dealer’s delivery and preparation obligations according to the agreements on file with the Commission which must be found by the Commission to be reasonable, or fail to adequately and fairly compensate its dealers for labor, parts and other expenses incurred by such dealer to perform under and comply with manufacturer’s warranty agreements. In no event shall any manufacturer or distributor pay its dealers an amount of money for warranty work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty work of like kind. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim in accordance with the requirements of the manufacturer or distributor on file with the Commission. Notwithstanding the terms of a franchise agreement or provision of law in conflict with this section, the dealer’s delivery, preparation, and warranty obligations as filed with the Commission shall constitute the dealer’s sole responsibility for product liability as between the dealer and manufacturer, and, except for a loss caused by the dealer’s failure to adhere to these obligations, a loss caused by the dealer’s negligence or intentional misconduct, or a loss caused by the dealer’s modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action.

“(10) Operate as a manufacturer, distributor, or representative without a currently valid license from the Commission or otherwise violate this Act or rules promulgated by the Commission hereunder.

“(11) Notwithstanding the terms of any franchise agreement, to prevent or refuse to honor the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution of this State unless it is shown to the Commission, after notice and hearing, that the result of such succession will be detrimental to the public interest or to the representation of the manufacturer or distributor; provided, however, nothing herein shall prevent a dealer, during his lifetime, from designating any person as his successor dealer, by written instrument filed with the manufacturer or distributor.

"(12) Require that a dealer pay or assume, directly or indirectly, any part of any refund, rebate, discount, or other financial adjustment made by the manufacturer, distributor, or representative to, or in favor of, any customer of a dealer, unless voluntarily agreed to by such dealer.

"(13) Notwithstanding the terms of any franchise agreement, deny or withhold approval of a written application to relocate a franchise unless (A) the applicant has received written notice of the denial or withholding of approval within 90 days after receipt of the application containing information reasonably necessary to enable the manufacturer or distributor to adequately evaluate the application, and (B) if the applicant files a protest with the Commission and establishes by a preponderance of the evidence at a hearing called by the Commission that the grounds for, and distance of, the relocation are reasonable."

SECTION 6. Section 5.04, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 5.04. SALE OF NEW MOTOR VEHICLES. No person may engage [represent to the public, by advertising or other means, that he is engaged] in the business of buying, selling, or exchanging new motor vehicles unless he holds a valid license issued by the Commission for the make or makes of new motor vehicles being bought, sold, or exchanged; or unless such person is acting as a bona fide employee or agent of the licensee; or unless such person is a second stage or allied equipment manufacturer modifying or converting new motor vehicles and offering them for sale with the original manufacturer's warranty unimpaired. In this Section, the term 'engage in the business of buying, selling, or exchanging new motor vehicles' means:

"(1) displaying for sale new motor vehicles on a lot or showroom; or

"(2) advertising for sale new motor vehicles; or

"(3) regularly or actively soliciting buyers for new motor vehicles."

SECTION 7. The Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended by adding Section 6.07 to read as follows:

"Section 6.07. WARRANTY PERFORMANCE OBLIGATIONS. (a) In addition to the other powers and duties provided for in this Act, the Commission shall cause manufacturers and distributors to perform the obligations imposed by this section. For purposes of this section, the term 'owner' means the person so designated on the certificate of title to a motor vehicle issued by the State Department of Highways and Public Transportation, or an equivalent document issued by the duly authorized agency of any other state, or any person to whom such motor vehicle is legally transferred during the duration of a manufacturer's or distributor's express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations thereof.

"(b) If a new motor vehicle does not conform to all applicable manufacturer's or distributor's express warranties and the owner reports the nonconformity to the manufacturer or distributor, its agent, or its authorized dealer during the term of such express warranties or during the period of one year following the date of original delivery of the motor vehicle to an owner, whichever is the earlier date, the manufacturer or distributor shall make the repairs as are necessary to conform the vehicle to applicable express warranties, notwithstanding such repairs are made after the expiration of such term or such one-year period. This section does not in any way limit the remedies available to an owner under a new motor vehicle warranty that extends beyond the one-year period covered by this section.

"(c) If the manufacturer or distributor is unable to conform the motor vehicle to an applicable express warranty by repairing or correcting any defect or

condition which substantially impairs the use and market value of the motor vehicle after a reasonable number of attempts, the manufacturer or distributor shall replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the owner and refund to the owner the full purchase price less a reasonable allowance for the owner's use of the vehicle. Refunds shall be made to the owner and lienholder, if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use of the motor vehicle prior to the first report of the nonconformity to the manufacturer or distributor, its agent, or its dealer and during any subsequent period when the vehicle is not out of service for repair. In any hearing before the Commission under this section, a manufacturer or distributor may plead and prove as an affirmative defense to the remedies provided hereunder that (1) the nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the motor vehicle; or (2) the nonconformity does not substantially impair the use or value of the motor vehicle.

"(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if (1) the same nonconformity has been subject to repair four or more times by the manufacturer or distributor, its agent, or its authorized dealer, within the express warranty term or during the period of one year following the date of original delivery to an owner, whichever is the earlier date, but such nonconformity continues to exist or (2) the vehicle is out of service for repair for a cumulative total of 30 or more days during such term or during such period, whichever is the earlier date. The term of an express warranty, such one-year period and, such 30-day period shall be extended by any period of time during which repair services are not available to the owner because of a war, invasion, strike or fire, flood, or other natural disaster. In no event shall the presumption herein provided apply against a manufacturer or distributor unless the manufacturer or distributor has received prior direct notification in writing from or on behalf of the owner and an opportunity to cure the alleged defect.

"(e) The provisions of Subchapter C of this Act are applicable to this section, and the Commission shall adopt rules and conduct hearings for the enforcement and implementation of this section. The provisions of this section are not available to an owner in an action seeking a refund or replacement based upon the alleged nonconformity of a motor vehicle to an express warranty applicable to the motor vehicle unless the owner has first exhausted the administrative remedies provided herein. The provisions of this section are not available to a party in an action against a seller under Chapter 2 or Chapter 17, Business & Commerce Code, as amended. The provisions of this section are available in an action against a manufacturer or distributor brought under Chapter 17, Business & Commerce Code, after the owner has exhausted the administrative provisions provided by this section. Any action brought under the provisions of this section shall be by trial de novo.

"(f) This section does not limit the rights or remedies otherwise available to an owner under any other law.

"(g) In a hearing under this section, the Commission shall make its order with respect to responsibility for payment of the cost of any refund or replacement and no manufacturer or distributor may cause any dealer to pay directly or indirectly any sum not specifically so ordered by the Commission.

"(h) A proceeding brought under this section shall be commenced within six months following the earlier of (1) expiration of the express warranty term or (2) one year following the date of original delivery of the motor vehicle to an owner.

"(i) Any contracted exclusion or modification of the remedies provided in this section is prohibited and shall be deemed null and void as against public policy."

SECTION 8. Section 7 of this Act applies only to a new motor vehicle, the original purchase of which occurred on or after October 1, 1983. All other sections of this Act take effect immediately upon passage.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Floor Amendment No. 1 - Schlueter

Amend C.S.S.B. 1141 by inserting the word "if" between the word "and" and the letter "(B)" on line 20, page 10, and by deleting the word "if" between the letter "(B)" and the word "the" on line 20, page 10.

Floor Amendment No. 2 - Oliveira

Amend C.S.S.B. 1141, page 3, line 27, to read:

"(h) The owner [~~a retail buyer~~] of a [~~new~~] motor vehicle or the owner's designated agent may

Amend C.S.S.B. 1141, page 12, line 8, to read:

the owner or the owner's designated agent reports the nonconformity to the manufacturer or

Floor Amendment No. 3 - Shaw

Amend C.S.S.B. 1141, page 4, line 4-5 to read:

in writing [~~by letter~~] to the applicable dealer, [~~a copy of which shall be sent to the applicable~~] manufacturer or distributor

The amendments were read.

Senator Brown moved to concur in the House amendments.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Parmer.

Absent-excused: Glasgow.

SENATE BILL 100 WITH HOUSE AMENDMENT

Senator Howard called S.B. 100 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1 - Schlueter

Amend S.B. 100 on page 6, lines 13 and 14 by striking "in United States Treasury bills" and substituting "as provided by Article 2525, Revised Statutes".

The amendment was read.

Senator Howard moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Parmer.

Absent-excused: Glasgow.

CONFERENCE COMMITTEE ON SENATE BILL 354 DISCHARGED

On motion of Senator Whitmire and by unanimous consent, the Conference Committee on S.B. 354 was discharged.

Senator Whitmire moved to concur in the House amendments to S.B. 354.

The motion prevailed.

MOTION TO RECESS

On motion of Senator Mauzy, the Senate at 11:25 o'clock a.m. took recess until 1:30 o'clock p.m. today at the conclusion of the Joint Session.

JOINT SESSION

(To hear address of The Honorable John Tower, United States Senator from Texas)

The President announced that the hour for the Joint Session of the two Houses to hear the address of The Honorable John Tower, pursuant to the provisions of H.C.R. 151, had arrived.

Accordingly, the Senators present, accompanied by the Secretary of the Senate and the Sergeant-at-Arms, repaired to the Hall of the House of Representatives at 11:30 o'clock a.m.

The President, by invitation of the Speaker of the House, occupied a seat on the Speaker's Rostrum.

The Honorable John Tower, accompanied by members of his party, was announced by the Doorkeeper of the House.

Senator Tower's party was escorted to the Speaker's Rostrum by Senators Harris, Leedom, McFarland, Farabee and Brown on the part of the Senate and Representatives Smith of Harris, Smith of Travis, Agnich, Craddick, DeLay, Eickenburg, Emmett, Fox, Geistweidt, A. Hill of Dallas, Horn, Jackson, Jones, Patrick, Pennington, Pierce, Robnett, Schoolcraft, Staniswallis, Vowell, Wright and Khoury on part of the House.

The President called the Senate to order and announced a quorum of the Senate present.

The Honorable Gib Lewis, Speaker of the House, announced a quorum of the House present and stated the purpose of the Joint Session.

Speaker Lewis presented The Honorable Jim Nowlin, United States District Judge, and former Member, House of Representatives.

Speaker Lewis then presented Representative Craddick who introduced Senator Tower.

Senator Tower addressed the Joint Session.

RECESS

The President announced the purpose of the Joint Session had been accomplished and declared the Senate at 11:55 o'clock a.m. would stand recessed, in accordance with a motion previously adopted in the Senate, until 1:30 o'clock p.m. today.

AFTER RECESS

The Senate met at 1:30 o'clock p.m. and was called to order by the President.

SENATE BILLS ON FIRST READING

On motion of Senator Brooks and by unanimous consent, the following bills were introduced, read first time and referred to the Committee indicated:

S.B. 1435 by Brooks

Education

Relating to the acceptance of the gift of a center for health and physical fitness for and on behalf of The University of Texas Medical Branch at Galveston; and declaring an emergency.

S.B. 1436 by Jones

Finance

Relating to the exemption from the motor fuels tax for gasoline and alcohol mixtures.

HOUSE BILLS AND RESOLUTIONS ON FIRST READING

The following bills and resolutions received from the House were read the first time and referred to the Committee indicated:

H.C.R. 106, To Committee on State Affairs.

H.C.R. 115, To Committee on State Affairs.

H.C.R. 166, To Committee on Administration.

H.C.R. 170, To Committee on State Affairs.

H.C.R. 185, To Committee on Administration.

H.C.R. 213, To Committee on Economic Development.

H.C.R. 221, To Committee on Administration.

H.C.R. 233, To Committee on Administration.

H.C.R. 247, To Committee on State Affairs.

H.C.R. 250, To Committee on Administration.

H.C.R. 253, To Committee on Administration.

H.B. 52, To Committee on Jurisprudence.

H.B. 337, To Committee on Jurisprudence.

H.B. 358, To Committee on Health and Human Resources.

H.B. 812, To Committee on State Affairs.

H.B. 1080, To Committee on Jurisprudence.

H.B. 1119, To Committee on Jurisprudence.

H.B. 1142, To Committee on Economic Development.

H.B. 1183, To Committee on Intergovernmental Relations.

H.B. 1241, To Committee on State Affairs.

H.B. 1273, To Committee on State Affairs.

H.B. 1289, To Committee on State Affairs.

H.B. 1370, To Committee on Health and Human Resources.

H.B. 1470, To Committee on Intergovernmental Relations.

H.B. 1562, To Committee on State Affairs.

H.B. 1613, To Committee on Finance.

H.B. 1643, To Committee on Intergovernmental Relations.

H.B. 1644, To Committee on Jurisprudence.

H.B. 1651, To Committee on Jurisprudence.

H.B. 1702, To Committee on State Affairs.

H.B. 1753, To Committee on Health and Human Resources.

H.B. 1773, To Committee on State Affairs.

H.B. 1863, To Committee on Economic Development.

H.B. 2094, To Committee on Education.

H.B. 2128, To Committee on Intergovernmental Relations.

H.B. 2129, To Committee on Intergovernmental Relations.

H.B. 2157, To Committee on State Affairs.

H.B. 2174, To Committee on Education.

- H.B. 2181, To Committee on Jurisprudence.
- H.B. 2237, To Committee on Jurisprudence.
- H.B. 2249, To Committee on Intergovernmental Relations.
- H.B. 2258, To Committee on Jurisprudence.
- H.B. 2259, To Committee on Jurisprudence.
- H.B. 2289, To Committee on Education.
- H.B. 2294, To Committee on Intergovernmental Relations.
- H.B. 2295, To Committee on Intergovernmental Relations.
- H.B. 2299, To Committee on Natural Resources.
- H.B. 2310, To Committee on Intergovernmental Relations.
- H.B. 2337, To Committee on Intergovernmental Relations.
- H.B. 2338, To Committee on Intergovernmental Relations.
- H.B. 2350, To Committee on Intergovernmental Relations.
- H.B. 2354, To Committee on Intergovernmental Relations.
- H.B. 2363, To Committee on State Affairs.
- H.B. 2364, To Committee on Intergovernmental Relations.
- H.B. 2385, To Committee on Intergovernmental Relations.
- H.B. 2390, To Committee on Intergovernmental Relations.
- H.B. 2391, To Committee on Natural Resources.
- H.B. 2393, To Committee on Intergovernmental Relations.
- H.B. 2401, To Committee on Natural Resources.
- H.B. 2404, To Committee on Intergovernmental Relations.
- H.B. 2406, To Committee on Intergovernmental Relations.
- H.B. 2407, To Committee on Intergovernmental Relations.
- H.B. 2409, To Committee on Intergovernmental Relations.
- H.B. 2410, To Committee on Intergovernmental Relations.
- H.B. 2411, To Committee on Intergovernmental Relations.
- H.B. 2412, To Committee on Intergovernmental Relations.
- H.B. 2414, To Committee on Intergovernmental Relations.
- H.B. 2425, To Committee on Natural Resources.
- H.B. 2432, To Committee on Intergovernmental Relations.
- H.B. 2433, To Committee on Intergovernmental Relations.
- H.B. 2435, To Committee on Intergovernmental Relations.
- H.B. 2439, To Committee on Intergovernmental Relations.
- H.B. 2440, To Committee on Intergovernmental Relations.
- H.B. 2441, To Committee on Intergovernmental Relations.
- H.B. 2443, To Committee on Intergovernmental Relations.
- H.B. 2445, To Committee on Intergovernmental Relations.

MESSAGE FROM THE HOUSE

House Chamber

May 23, 1983

HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 2227, Relating to the authority of any general law city, town or village to annex up to 5,280 feet gulfward of the coastline.

The House has concurred in Senate amendments to H.B. 894 by a non-record vote.

The House has concurred in Senate amendments to H.B. 2371 by a non-record vote.

The House has refused to concur in Senate amendments to **H.B. 2298** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. House Conferees: Tejeda, Chairman; Madla, Garcia of Bexar, Sutton, Pierce.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 1409 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1409, Relating to the authority of certain cities to impose a hotel occupancy tax; providing for authorized uses of revenues derived from the tax imposed; amending Chapter 63, Acts of the 59th Legislature, Regular Session, 1965 (Article 1269j-4.1, Vernon's Texas Civil Statutes); and declaring an emergency.

The bill was read second time and was passed to third reading.

HOUSE BILL 1409 ON THIRD READING

Senator Harris moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1409** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent: Parmer.

Absent-excused: Glasgow.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0.

Absent: Parmer.

Absent-excused: Glasgow.

(Senator Traeger in Chair)

HOUSE BILL 896 ON SECOND READING

On motion of Senator Sharp and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 896, Relating to unemployment compensation and the taxes levied for benefits and for the principal of and interest on federal advances.

The bill was read second time.

Senator Sharp offered the following committee amendment to the bill:

Amend **H.B. 896** as follows:

(1) On page 12, line 17, between "rate" and "for" insert "computed under this Act".

(2) On page 16, line 23, strike "during that same period" and substitute "for the four quarters ending the preceding June 30".

The committee amendment was read and was adopted.

On motion of Senator Sharp and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 896 ON THIRD READING

Senator Sharp moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 896 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Glasgow.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Glasgow.

COMMITTEE SUBSTITUTE HOUSE BILL 1174 ON SECOND READING

On motion of Senator Sarpalius and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1174, Relating to the establishment and funding of mutual consent voluntary adoption registries and the maintenance and confidentiality of, and access to, adoption records and birth certificates; providing penalties.

The bill was read second time and was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 1174 ON THIRD READING

Senator Sarpalius moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1174** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Blake, Brooks, Caperton, Doggett, Edwards, Farabee, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Vale, Whitmire, Williams.

Nays: Brown, Washington.

Absent-excused: Glasgow.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1.

Nays: Brown.

Absent-excused: Glasgow.

HOUSE BILL 1474 ON SECOND READING

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1474, Relating to the provision of dangerous drugs by licensed physicians who practice in rural areas.

The bill was read second time.

Senator Farabee offered the following committee amendment to the bill:

Amend Section 33 of Article 4542a-1, V.T.C.S., in **SECTION 1 of H.B. 1474** by deleting Subsection (c) and substituting the following:

“(c) A licensed physician who practices medicine in a rural area in which there is no pharmacy may maintain a supply of dangerous drugs in the office of the physician to be dispensed in the course of treating the physician’s patients and may be reimbursed for the cost of supplying those drugs without obtaining a license under this Act. Such physicians shall comply personally with all appropriate labeling sections of this Act, and oversee compliance with packaging and recordkeeping sections applicable to the class of drugs. For the purposes of this subsection:

(1) the term “rural area” means an area in which there is no pharmacy within a 15-mile radius of the physician’s office, and is within

(A) a county with a total population of 5,000 or less according to the most recent federal census; or

(B) city or town, incorporated or unincorporated, with a population of less than 2,500, according to the most recent federal census; but shall not include a city or town, incorporated or unincorporated, whose boundaries are adjacent to an incorporated city or town with an equal or greater population.

(2) the term “reimbursed for cost” shall mean an additional charge separate from that made for the physician’s professional services which include the cost of the drug product and all other actual costs to the physician incidental to providing the dispensing service but not including a separate fee for the act of dispensing the drug product itself.”

Amend Section 5.09 of Article 4459b, V.T.C.S., in **SECTION 2 of H.B. 1474** by deleting Subsection (b) and substituting the following:

“(b) A licensed physician who practices medicine in a rural area in which there is no pharmacy may maintain a supply of dangerous drugs in the office of the physician to be dispensed in the course of treating the physician’s patients and may be reimbursed for the cost of supplying those drugs without obtaining a license under the Texas Pharmacy Act (Article 4524a-1, Vernon’s Texas Civil Statutes). Such physicians shall comply with all appropriate labeling sections applicable to this class of drugs under the Texas Pharmacy Act, and oversee compliance with packaging and recordkeeping sections applicable to this class of drugs. For the purposes of this subsection:

(1) the term “rural area” means an area in which there is no pharmacy within a 15-mile radius of the physician’s office, and is within

(A) a county with a total population of 5,000 or less according to the most recent federal census; or

(B) city or town, incorporated or unincorporated, with a population of less than 2,500, according to the most recent federal census; but shall not include a city or town, incorporated or unincorporated, whose boundaries are adjacent to an incorporated city or town with an equal or greater population.

(2) the term "reimbursed for cost" shall mean an additional charge separate from that made for the physician's professional services which include the cost of the drug product and all other actual costs to the physician incidental to providing the dispensing service but not including a separate fee for the act of dispensing the drug product itself."

The committee amendment was read.

Senator Doggett offered the following amendment to the committee amendment:

Amend Section 1 of Committee Amendment 1 of **H.B. 1474** by inserting the following sentences before the sentence beginning with the word "FOR" to read as follows:

Physicians desiring to dispense dangerous drugs under this sub-section shall notify both the Texas State Board of Pharmacy and the Texas State Board of Medical Examiners that such physician practices in a rural area, as hereinafter defined. Such physician may continue to so dispense dangerous drugs until the State Board of Pharmacy shall determine, upon notice and hearing to such physician, that such physician no longer practices in a rural area as hereinafter defined."

The amendment to the committee amendment was read and was adopted.

Question recurring on adoption of the committee amendment as amended, the committee amendment as amended was adopted.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 1474 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1474** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Glasgow.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Glasgow.

HOUSE BILL 430 ON SECOND READING

On motion of Senator Mauzy and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 430, Relating to the purposes for which cities may engage in zoning.

The bill was read second time and was passed to third reading.

HOUSE BILL 430 ON THIRD READING

Senator Mauzy moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 430 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Glasgow.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Glasgow.

HOUSE BILL 1038 ON SECOND READING

On motion of Senator Vale and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1038, Relating to the consolidation of duties in connection with voter registration and the conduct of elections in the office of the county clerk or county tax assessor-collector.

The bill was read second time.

Senator Mauzy offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1038** by striking Section 4 and placing in lieu thereof a new Section 4 to read as follows:

SECTION 4, Section 56a, Texas Election Code, as amended (Article 5.24a, Vernon's Texas Election Code), is amended to read as follows:

"Article 56a. COUNTY ELECTIONS ADMINISTRATOR

"Subdivision 1. CREATION OF POSITION [~~OFFICE~~]. In any county in this state, the commissioners court by order recorded in its minutes may establish the position [~~appointive office~~] of county elections administrator of the county, who shall perform the duties and functions specified in Subdivision 3 of this section. The order of the commissioners court shall state the date on which the creation of the position [~~office~~] of administrator becomes effective[, but the date may not be earlier than March 1, 1979]. The order may provide for placing the administrator-designate on the county payroll at a date not more than 90 days before the effective date for creation of the position [~~office~~] so that he may make suitable plans for assuming his duties on the effective date. Within three days after the entry of the order, the county clerk shall send a copy of the order to each member of the county elections commission and to the secretary of state and the comptroller of public accounts.

"Subdivision 2. APPOINTMENT OF ADMINISTRATOR; COUNTY ELECTIONS COMMISSION. (a) Composition of the commission. Where the position [~~office~~] of county elections administrator is created in a county, the position [~~office~~] shall be filled by appointment of the county elections commission of the county, which shall consist of the following members: the county judge of the county as chairman of the commission; the county clerk of the county as vice-chairman of the commission; the tax assessor-collector of the county as clerk of the commission; and the chairman of the county executive committee of each political party whose nominees at the last general election for state and county

officers were nominated by primary election. In any county in which the offices of sheriff and tax assessor-collector are combined, the sheriff shall hold the position specified for the tax assessor-collector. In any county in which a party which nominates by primary election does not have a county organization, the membership of the commission is reduced accordingly. A majority of the total membership of the commission constitutes a quorum. The affirmative vote of a majority of the total membership of the commission is necessary for the selection of an administrator. Each member of the commission who is present at a meeting, including the presiding officer, is entitled to vote. Each appointment made by the commission shall be evidenced by a written resolution or order signed by the number of members necessary to make the appointment, and the resolution or order shall be filed as a public record in the office of the county clerk. Within three days after the filing, the county clerk shall forward a copy of the resolution or order to the secretary of state.

“(b) Meetings of the commission. Meetings of the commission shall be called by the chairman. If the chairman fails to call a meeting within 10 days after the entry of the order creating the position [office] of county elections administrator or within 10 days after a vacancy arises in the position [office], ~~or if he fails to call a meeting by January 15 of an odd-numbered year, preceding the expiration of the administrator's term of office~~, the vice-chairman shall call the meeting. The person who calls a meeting shall set the time and place for the meeting and shall give written notice of the time and place to each other member at least three days in advance of the meeting date.

“(c) Qualifications for administrator. (1) The person appointed as administrator must be a resident of this state but need not be a resident of the county at the time of his appointment; but after he assumes the position° [office], he must maintain his residence in the county during his employment [tenure in office].

“(2) He must be a registered voter at his place of residence.

“(3) He may not be a candidate for public office, as defined by Chapter 14 of this code, while employed as [holding the office of] county elections administrator. Filing for candidacy constitutes an automatic resignation from the position of county elections administrator effective at the time of filing.

“(4) He may not actively support or contribute to any candidate for public office, any officeholder, or any political party while employed as [holding the office of] county elections administrator. Violation of this provision is a Class A misdemeanor and conviction produces automatic termination of employment [removal from office]. A person so convicted is ineligible for appointment as county elections administrator in any county in the state.

“(d) Time of appointment[; rescission]. The county elections commission may make the initial appointment of an administrator at any time after the entry of the commissioners court's order creating the position [office], regardless of the length of time remaining between the date of the appointment and the effective date of the creation of the position [office], and it may make an appointment to fill an anticipated vacancy arising from a resignation to take effect at a future date at any time after the resignation is accepted. [After an appointment is made and accepted, it may not be rescinded without the consent of the appointee, regardless of any changes that may occur in the membership of the commission before the appointee assumes his duties.]

“Subdivision 3. DUTIES OF ADMINISTRATOR. (a) Registration of voters. On the effective date of an order entered pursuant to Subdivision 1 of this section, or as soon thereafter as an administrator has been appointed and has qualified, the county elections administrator shall assume and thereafter perform all the duties and functions to be performed by the registrar of voters, pursuant to Section 41a of this code (Article 5.09a, Vernon's Texas Election Code).

"(b) Conduct of elections. In addition to the duties and functions specified in paragraph (a) of this subdivision, the administrator shall perform all the duties and functions which are placed upon the county clerk by any provision of this code or any other statute of this state in connection with the conduct of elections, as more fully defined in Section 56b of this code (Article 5.24b, Vernon's Texas Election Code).

"Subdivision 4. SALARY OF ADMINISTRATOR; OFFICE STAFF; OPERATING EXPENSES. Where the position [office] of county elections administrator is created, the commissioners court shall fix his salary, and shall also fix the number, grade, and salaries of paid deputies, assistants, and other persons that he may employ. However, the administrator may appoint unpaid deputies to assist in voter registration, as authorized in Section 52a of this code (Article 5.20a, Vernon's Texas Election Code), without the approval of the commissioners court. The salary of the administrator shall not exceed the salary paid to the county clerk of that county, and the salaries paid to his employees shall not exceed the salaries paid to the employees of the county clerk in comparable positions. The commissioners court may allow such automobile expense as it deems necessary to the administrator and to any of his employees in the performance of their official duties. The commissioners court shall make provision for furnishing the administrator with suitable office space and with the necessary equipment and operating expenses for the proper conduct of his office. The amount appropriated by the commissioners court for the administrator's office shall not be less than the amounts previously appropriated to the county clerk and the county tax assessor-collector for the duties formerly required of them but now assigned to the administrator, with additional appropriations, if required, to compensate for the effects of inflation and rising costs of supplies, equipment, and personnel.

"Subdivision 5. TERMINATION OF EMPLOYMENT [~~TERM OF OFFICE~~]. The employment [~~initial appointment~~] of the county elections administrator may be terminated at any time for good and sufficient cause on the four-fifths vote of the county elections commission and approval of that action by a majority vote of the commissioners court [~~shall be until the beginning of the first regular term thereafter. The regular term of office for the administrator is for a period of two years beginning on March 1 in each odd-numbered year. Between January 1 and January 15 preceding the expiration of the term, the chairman of the county elections commission shall call a meeting of the commission for the purpose of making an appointment for the succeeding term. Any vacancy in the office shall be filled by the commission for the remainder of the unexpired term. The administrator may be removed from office in the same manner and on the same grounds as provided by general law for removal of county officers or as provided for under paragraph (c) of Subdivision 2 of this section~~].

"Subdivision 6. BOND OF ADMINISTRATOR AND DEPUTIES. Before entering into the duties of his position [office], the county elections administrator [~~shall take and subscribe to the official oath and~~] shall give an official bond in an amount to be fixed by the commissioners court, made payable to the county judge and approved by the commissioners court, conditioned for the faithful performance of the duties of his position [office]. Either the commissioners court or the administrator may require his deputies to give a similar bond in an amount not exceeding the amount of the administrator's bond.

"Subdivision 7. SEAL OF ADMINISTRATOR. The administrator shall provide himself with an official seal, on which shall be inscribed a star with five points surrounded by the words 'County Elections Administrator, °° County, Texas' (the blank to be filled in with the name of the county), for use in certifying documents which are required to be impressed with the seal of the certifying officer.

“Subdivision 8. TRANSFER OF RECORDS. As soon as practicable after the effective date of the order creating the position [office] of county elections administrator, the officer formerly serving as the registrar of voters shall transfer to the administrator all records and papers pertaining to voter registration, and the county clerk shall transfer to him all voting equipment and supplies of which the clerk has custody and all records and papers in his possession which pertain to an uncompleted election. The commissioners court shall determine which records of prior elections are to be transferred to the administrator and which are to remain in the county clerk’s office.

“Subdivision 9. ABOLISHMENT OF POSITION [OFFICE]. The commissioners court may abolish the position [office] of county elections administrator at any time ~~[after two years have elapsed from the date of the order creating it by having an order entered into the minutes of the court to become effective at the expiration of the current term of the administrator]~~. If the position ~~“~~ [office”] is abolished, voter registration duties thereafter shall be performed by the county tax assessor-collector and the other duties shall be performed by the county clerk unless a transfer of duties and functions occurs under Section 41b or 56c of this code, in which case the appropriate officer shall perform the designated duties and functions ~~[, except that the commissioners court may designate the county clerk to be the registrar of voters and to perform the duties assigned to the registrar, as authorized in Section 41b of this code]~~. Within three days after the entry of an order abolishing the position [office] of county elections administrator, the county clerk shall send a copy of the order to the secretary of state and the comptroller of public accounts.

“Subdivision 10. OFFICE HOURS ON ELECTION DAY. The office of the county elections administrator shall remain open during the hours the polls are open on the day of any general election, primary election, or runoff primary election in which a statewide office appears on the ballot.

“Subdivision 11. REFERENCE TO OFFICE. Any reference in the law to the appointive office of county elections administrator means the position of county elections administrator as provided by this section.”

“Subdivision 12. A person serving as county elections administrator on the effective date of this Act continues to serve in that position as though he had been employed under the law as amended by this Act.”

The amendment was read and was adopted.

Senator Mauzy offered the following amendment to the bill:

Floor Amendment No. 2

Amend H.B. 1038 by adding a new Section 5 to read as follows and renumbering the current Section 5 as Section 6:

SECTION 5. Section 64(a), Texas Election Code (Article 6.09, Vernon’s Texas Election Code), is amended to read as follows:

(a) The authority responsible for furnishing the ballots in an election shall furnish each election precinct a number of ballots equal to the percentage of voters who voted in that precinct in the most recent corresponding election plus 25 percent of that number. The number of ballots furnished may not exceed the total number of registered voters in the precinct [sufficient to conduct the election]. The official ballots to be counted before delivery and sealed up and together with the instruction cards, with poll lists, tally sheets, distance markers, returning blanks and stationery, shall be delivered to the precinct judges, and the number of each endorsed on the package, and entered of record by the clerk in the minutes of the Commissioners Court or, in an election ordered by an authority of a political subdivision other than a county, on the minutes of the governing body of that

subdivision. In like manner, shall be sent the list of qualified voters for the precinct certified to by the collector.

The amendment was read and was adopted.

On motion of Senator Vale and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 1038 ON THIRD READING

Senator Vale moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1038** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Glasgow.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Glasgow.

SENATOR ANNOUNCED PRESENT

Senator Glasgow who had previously been recorded as "Absent-excused" was announced "Present".

SENATE RULE 103 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Health and Human Resources might consider **H.B. 1753** today.

(Senator Vale in Chair)

HOUSE BILL 1130 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1130, Relating to supplemental appropriations to pay the additional cost of purchased utilities at certain institutions of higher education.

The bill was read second time and was passed to third reading.

HOUSE BILL 1130 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1130** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1350 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1350, Relating to the creation, administration, powers, duties, operation, expansion, and financing of the New Ulm Municipal Utility District.

The bill was read second time and was passed to engrossment.

SENATE BILL 1350 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1350** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 2298

Senator Vale called from the President's table for consideration at this time, the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 2298** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 2298** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Vale, Chairman; Montford, Parmer, Traeger and Lyon.

HOUSE JOINT RESOLUTION 30 ON SECOND READING

On motion of Senator Traeger and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.J.R. 30, Proposing a constitutional amendment authorizing statutory provisions for succession of public office during disasters caused by enemy attack, and authorizing the suspension of certain constitutional rules relating to legislative procedure during those disasters or during immediate threat of enemy attack.

The resolution was read second time and was passed to third reading by the following vote: Yeas 20, Nays 9.

Yeas: Blake, Brown, Edwards, Farabee, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, McFarland, Montford, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Williams.

Nays: Brooks, Caperton, Doggett, Mauzy, Parker, Truan, Vale, Washington, Whitmire.

Absent: Glasgow, Uribe.

HOUSE JOINT RESOLUTION 30 ON THIRD READING

Senator Traeger moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.J.R. 30 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 5.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Farabee, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Vale, Williams.

Nays: Doggett, Mauzy, Truan, Washington, Whitmire.

Absent: Glasgow, Uribe.

The resolution was read third time and was passed by the following vote: Yeas 24, Nays 6.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Williams.

Nays: Doggett, Mauzy, Truan, Vale, Washington, Whitmire.

Absent: Uribe.

COMMITTEE SUBSTITUTE SENATE BILL 1380 ON THIRD READING

On motion of Senator Parmer and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

C.S.S.B. 1380, Relating to electric utility energy efficiency programs and incentives.

The bill was read third time and was finally passed.

MESSAGE FROM THE HOUSE

House Chamber
May 23, 1983

HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has concurred in Senate amendments to **H.B. 1304** by a record vote of 129 ayes, 0 noes, and 1 present not voting.

The House has concurred in Senate amendments to **H.B. 897** by a record vote of 123 ayes, 0 noes, and 2 present not voting.

The House has concurred in Senate amendments to **H.B. 147** by a record vote of 125 ayes, 2 noes, and 1 present not voting.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL ON FIRST READING

The following bill received from the House was read the first time and referred to the Committee indicated:

H.B. 2227, To Committee on Natural Resources.

HOUSE BILL 1732 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1732, Relating to establishment of a temporary emergency relief program in certain communities.

The bill was read second time and was passed to third reading.

RECORD OF VOTE

Senator Howard asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1732 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1732** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Harris, Henderson, Jones, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Vale, Whitmire, Williams.

Nays: Howard, Washington.

The bill was read third time and was passed.

RECORD OF VOTE

Senator Howard asked to be recorded as voting "Nay" on the final passage of the bill.

(President in Chair)

SENATE RULE 103 SUSPENDED

On motion of Senator Santiesteban and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Natural Resources might consider the following bills and resolution upon adjournment today:

H.B. 2112

H.C.R. 130

H.B. 2391

H.B. 2425

COMMITTEE SUBSTITUTE SENATE BILL 1158 ON SECOND READING

Senator Whitmire asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

S.B. 1158, Relating to certain loans made by an industrial development corporation.

There was objection.

Senator Whitmire then moved to suspend the regular order of business and take up **C.S.S.B. 1158** for consideration at this time.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Kothmann, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

Nays: Doggett, Henderson, Howard, Jones, Leedom, Sarpalius.

The bill was read second time.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 1

Amend S.B. 1158, Section 1 of the bill, page 1, line 53, by inserting after the semicolon the following:

“provided, however, that the yield to lending institutions shall not exceed the yield on the bonds plus 1 1/2% after having taken into account actual costs of issuance;”

The amendment was read and was adopted.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 2

Amend S.B. 1158, Section 2 of the bill, page 2, line 36, by inserting after the period the following:

“Each project shall be subject to the same project approval requirements it would have been had the financing not been arranged through a lending institution.”

The amendment was read and was adopted.

On motion of Senator Whitmire and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

RECORD OF VOTES

Senators Howard and Leedom asked to be recorded as voting “Nay” on the passage of the bill to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 1158 ON THIRD READING

Senator Whitmire moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 1158 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Harris, Kothmann, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sharp, Sims, Traeger, Truan, Uribe, Vale, Whitmire, Williams.

Nays: Henderson, Howard, Jones, Leedom, Sarpalius, Washington.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 6.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Kothmann, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

Nays: Doggett, Henderson, Howard, Jones, Leedom, Sarpalius.

MESSAGE FROM THE HOUSE

House Chamber
May 23, 1983

HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 130, Recalling H.B. 1505 from the House.

The House has refused to concur in Senate amendments to **H.B. 1125** and has requested the appointment of a Conference Committee to consider the differences between the two houses. House Conferees: Hinojosa, Chariman; Jones, Oliveira, Evans of Harris, Moreno of Hidalgo.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE RULE 103 SUSPENDED

On motion of Senator Traeger and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Intergovernmental Relations might consider the following bills at 3:00 o'clock p.m. tomorrow:

H.B. 2414

H.B. 2364

H.B. 1470

CONFERENCE COMMITTEE ON HOUSE BILL 1473

Senator Traeger called from the President's table for consideration at this time, the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1473** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1473** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Traeger, Chairman; Lyon, Parmer, Leedom and Sims.

SENATE RULE 103 SUSPENDED

On motion of Senator Mauzy and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Jurisprudence might consider **H.B. 1852** at 2:00 o'clock p.m. tomorrow.

CONFERENCE COMMITTEE ON HOUSE BILL 1125

Senator Uribe called from the President's table for consideration at this time, the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1125** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1125** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Uribe, Chairman; Farabee, Sharp, Traeger and Glasgow.

MOTION TO PLACE SENATE BILL 1108 ON SECOND READING

Senator Parmer moved to suspend the regular order of business to take up for consideration at this time:

S.B. 1108, Relating to the establishment of a School of Podiatry at the Texas College of Osteopathic Medicine; amending Subchapter J, Chapter 74, Texas Education Code; and declaring an emergency.

The motion was lost by the following vote: Yeas 18, Nays 13. (Not receiving two-thirds vote of the Members present)

Yeas: Brooks, Doggett, Edwards, Glasgow, Henderson, Jones, Kothmann, McFarland, Montford, Parker, Parmer, Santiesteban, Traeger, Truan, Uribe, Vale, Whitmire, Williams.

Nays: Blake, Brown, Caperton, Farabee, Harris, Howard, Leedom, Lyon, Mauzy, Sarpalius, Sharp, Sims, Washington.

BILLS AND RESOLUTION SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolution:

H.J.R. 91	H.B. 724
H.B. 134	H.B. 842
H.B. 225	H.B. 854
H.B. 374	H.B. 930
H.B. 378	H.B. 936
H.B. 449	H.B. 943
H.B. 455	H.B. 970
H.B. 475	H.B. 1031
H.B. 534	H.B. 1064
H.B. 544	H.B. 1368
H.B. 603	H.B. 1395
H.B. 634	H.B. 1582
H.B. 637	H.B. 1725
H.B. 639	H.B. 2009
H.B. 647	H.B. 2165
H.B. 242	

VOTE ON FINAL PASSAGE OF HOUSE BILL 1505 RECONSIDERED

On motion of Senator Brown and by unanimous consent, the vote by which **H.B. 1505** was finally passed was reconsidered.

Question—Shall **H.B. 1505** be finally passed?

Senator Brown offered the following amendment to the bill:

Amend **H.B. 1505** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 13a, Housing Authorities Law (Article 1269k, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) For purposes of the public meeting requirements in Subsection (a) of this section and for the purposes of Section 6 of this Act, "housing project" means, in addition to the definition prescribed in Subsection (i), Section 3, of this Act:

(1) any work or undertaking that is financed in any way by public funds or tax exempt revenue bonds and undertaken for any of the reasons listed in Subsection (i) of Section 3; or

(2) a building over which a housing authority has jurisdiction and which has any part reserved for occupancy by persons receiving income or rental supplements from a governmental entity.

SECTION 2. Section 6, Housing Authorities Law (Article 1269k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. ~~INTERESTED COMMISSIONERS [OR EMPLOYEES].~~ (a) No commissioner ~~[or employee]~~ of an authority shall own, acquire, or control any interest, direct or indirect, in any housing project or in any property included or planned to be included in any project. ~~Nor[; nor]~~ shall he have any interest, direct or indirect, in any contract or proposed contract for:

(1) the sale of land to be used for a housing project;

(2) the construction of a housing project; or

(3) the sale of materials or services to be furnished or used in connection with any housing project. [materials or services to be furnished or used in connection with any housing project] Nor shall he have any dealings for pecuniary gain with any housing project.

However, it is not unlawful for a commissioner:

(1) to manage a housing project or to own, acquire, or control a management company rendering management services to a housing project;

(2) to continue to own or control any interest in a housing project held by the commissioner prior to his term as commissioner; or

(3) to own, acquire, or control any interest in or have any dealings with a housing project over which the commissioner's housing authority has no jurisdiction.

(b) If any commissioner [or employee] of an authority manages, owns, acquires, or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, or if any commissioner has any other dealings for pecuniary gain with any housing project, he [immediately] shall immediately disclose the same in writing to the authority. The [and such] disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct of office.

(c) A commissioner who knowingly or intentionally violates Subsection (a) or (b) of this section commits an offense. An offense under this subsection is a felony of the third degree.

(d) A person finally convicted under Subsection (c) of this section is ineligible for future employment with the State, its political subdivisions, or a public corporation formed under authority of the State or a political subdivision of the State.

SECTION 3. The Housing Authorities Law (Article 1269k, Vernon's Texas Civil Statutes) is amended by adding Section 6a to read as follows:

Sec. 6a. INTERESTED EMPLOYEES. (a) No employee of an authority shall own, acquire, or control any interest, direct or indirect, in any housing project or in any property included or planned to be included in any housing project. Nor shall the employee own, acquire, or control any interest, direct or indirect, in any contract or proposed contract for:

(1) the sale of land to be used for a housing project;
(2) the construction of a housing project; or
(3) the sale of materials or services to be furnished or used in connection with any housing project. Nor shall the employee have any dealings for pecuniary gain with any housing project, except in the performance of his duties as an employee of the housing authority.

(b) An employee who knowingly or intentionally violates Subsection (a) of this section commits an offense. An offense under this subsection is a felony of the third degree.

(c) A person finally convicted under Subsection (b) of this section is ineligible for future employment with the State, its political subdivisions, or a public corporation formed under authority of the State or a political subdivision of the State.

SECTION 4. The amendment to the Housing Authorities Law (Article 1269k, Vernon's Texas Civil Statutes) by this Act does not affect any ground for removal of a commissioner of a housing authority or any criminal offense committed under that Act before the effective date of this Act. A proceeding to enforce such a ground for removal or criminal penalty may be continued or may be initiated on or after the effective date of this Act as if this Act were not in force. The previous law is continued in effect for that purpose. For the purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted by unanimous consent.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was again finally passed.

MESSAGE FROM THE HOUSE

House Chamber
May 23, 1983

HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 376, Providing that municipalities participating in Texas Municipal Retirement System may allow to eligible members updated service credits calculated to include unforfeited credited service from other participating municipalities.

S.B. 741, Relating to the regulation of bingo. (With amendments)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

MEMORIAL RESOLUTIONS

H.C.R. 244 - (Jones): Memorial resolution for A. B. Morris.

S.R. 667 - By Montford: Memorial resolution for Mary Jane Snodgrass.

WELCOME AND CONGRATULATORY RESOLUTIONS

H.C.R. 220 - (Henderson): Commending John G. Morrison, mayor of Katy.

H.C.R. 224 - (Traeger): Commending Jane Weinert Blumberg.

H.C.R. 226 - (Uribe): Extending congratulations to Ned and Betty Lollar.

H.C.R. 231 - (Sims): Extending congratulations to the Pearsall High School Maverick Band.

H.C.R. 237 - (Edwards): Extending congratulations to the city of Midlothian on its 100th anniversary.

H.C.R. 249 - (Sims): Commending George Washington Arnold.

H.C.R. 252 - (Brown): Commending Clara W. Bewie.

H.C.R. 257 - (Parker): Designating October, 1983, as "Crime Stoppers Month".

H.C.R. 260 - (Doggett): Extending congratulations to Arthur Rankin.

S.R. 655 - By Santiesteban: Commending the Natural Resources Advisory Group of the 29th Senatorial District.

S.R. 656 - By Edwards: Honoring Bill Hickey.

S.R. 657 - By Doggett: Commending Mrs. Denver L. Wydermeyer for her years of service to the Austin Independent School District.

S.R. 658 - By Doggett: Extending congratulations to the FFA Land Judging team members from Pflugerville High School.

S.R. 659 - By Edwards: Extending congratulations to FFA team members from Lorena.

S.R. 660 - By Sharp: Extending congratulations to Alan Young.

S.R. 661 - By Montford: Commending Forest Scott.

S.R. 662 - By Kothmann: Extending congratulations to FFA team members from East Central High School.

S.R. 663 - By Brooks: Commending the College of the Mainland for its "Learn and Earn" program.

S.R. 664 - By Jones: Extending congratulations to FFA team members from May.

S.R. 665 - By Farabee: Extending welcome to the senior class of Harrold High School.

S.R. 668 - By Uribe: Extending congratulations to Mr. and Mrs. Marc Katz.

ADJOURNMENT

On motion of Senator Mauzy, the Senate at 3:48 o'clock p.m. adjourned until 10:00 o'clock a.m. tomorrow.

APPENDIX

Signed by Governor
(May 18, 1983)

H.C.R. 245

S.B. 1018 (Effective immediately)

(May 19, 1983)

H.C.R. 254

(May 20, 1983)

H.C.R. 246

S.B. 619 (Effective September 1, 1983)

S.B. 438 (Effective immediately)

S.B. 582 (Effective immediately)

H.B. 1255 (Effective August 29, 1983)

H.B. 553 (Effective September 1, 1983)

H.B. 1389 (Effective August 29, 1983)

H.B. 46 (Effective August 29, 1983)

H.B. 94 (Effective immediately)

H.B. 131 (Effective August 29, 1983)

H.B. 266 (Effective August 29, 1983)

H.B. 276 (Effective August 29, 1983)

H.B. 797 (Effective immediately)

H.B. 1231 (Effective September 1, 1983)

H.B. 1346 (Effective September 1, 1983)

S.B. 221 (Effective September 1, 1983)

S.B. 246 (Effective August 29, 1983)

S.B. 261 (Effective August 29, 1983)

S.B. 262 (Effective August 29, 1983)

S.B. 749 (Effective immediately)

S.B. 281 (Effective immediately)

S.B. 384 (Effective upon adoption of
S.J.R. 12)

S.B. 392 (Effective August 29, 1983)

S.B. 393 (Effective August 29, 1983)

S.B. 394 (Effective August 29, 1983)

S.B. 420 (Effective immediately)

S.B. 439 (Effective September 1, 1983)

S.B. 442 (Effective immediately)

S.B. 460 (Effective immediately)

S.B. 466 (Effective immediately)

S.B. 469 (Effective immediately)

S.B. 670 (Effective immediately)

S.B. 510 (Effective August 29, 1983)

S.B. 517 (Effective immediately)

S.B. 636 (Effective immediately)

S.B. 861 (Effective September 1, 1983)

S.B. 897 (Effective immediately)

S.B. 1224 (Effective immediately)

H.B. 2437 (Effective immediately)

(May 21, 1983)

S.B. 222 (Effective August 29, 1983)

H.B. 962 (Effective immediately)

Filed without Signature of Governor
(May 21, 1983)

S.C.R. 58

(May 23, 1983)

S.J.R. 13 (Effective November 8, 1983)

SEVENTY-THIRD DAY

(Tuesday, May 24, 1983)

The Senate met at 10:00 o'clock a.m., pursuant to adjournment and was called to order by Senator Brooks.

The roll was called and the following Senators were present: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

A quorum was announced present.

The Reverend Edward O. Jackson, Church of the Nazarene, Lake Whitney, offered the invocation as follows:

Our Heavenly Father, we come to You on this beautiful morning with thankful hearts. We thank You for all Your goodness to us in the past and today and in the tomorrows. We thank You for our great State of Texas, for our leaders in the past and our leaders today. We thank you for Governor White and for helping him. We pray Thou wilt continue to help him in his decisions and as he carries on his responsibilities as Governor. We thank You for every member of this great Senate. We pray You will be with each Senator as they carry out the responsibilities they have been elected by the people of this great State to do. Help each one to keep in mind we have a great God to help us make the right decision that we may continue to have a beautiful State, a safe place to live and to enjoy. In the name of Jesus Christ our Lord and Savior, we ask these things. Amen.

On motion of Senator Mauzy and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

REPORTS OF STANDING COMMITTEES

Senator Brooks submitted the following report for the Committee on Health and Human Resources:

S.B. 1423

H.B. 500

Senator Parmer, Acting Chairman, submitted the following report for the Committee on Health and Human Resources:

H.B. 2087

H.B. 1753 (Amended)